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POLICY STATEMENTS CONCERNING CODE PROVISIONS AND RELATED SUBJECTS

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MEMORANDUM TO: SECTION HEADS December 19, 1935

SUBJECT: WORK MATERIALS NO. 20

POLICY STATEMENTS CONCERNING CODE PROVISIONS AND RELATED SUBJECTS.

The following pages contain a compilation of policy statements with respect to code provisions and related subjects. The compilation, while not an official document, is expressive of the standards that were ordinarily followed. It is now made available for confidential use within the Division of Review in connection with the various studies in process.

This volume was compiled by Alvin Brown, Review Officer of the National Recovery Administration, in May, and June, 1935, at the request of the Executive Secretary of the National Industrial Recovery Board.

The numbers in the margin refer to the pertinent paragraphs in the Office Manual.

L. C. Marshall,
Director, Division of Review

C O D E M A K I N G

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Substantive Guides

(Manual, II-1000-1999)

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Amendments: Substantive Guides

(Manual, II-5100-5199)

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Model Code Provisions

June 12, 1935

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General policy

It is then declared to be the policy of Congress to do the following things: 1012

Obstructions to commerce

To remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof. 1012.1

Organization of industry

To provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups. 1012.2

Cooperation of labor and industry

To induce and maintain united action of labor and management under adequate government sanctions and supervisions. 1012.3

Unfair competition

To eliminate unfair competition. 1012.4

Utilization of Productive capacity

To promote the fullest possible utilization of the present productive capacity of industries; to avoid undue restriction of production (except as may be temporarily required.) 1012.5

Increase of consumption

To increase the consumption of industrial and agricultural products by increasing purchasing power. 1012.6

Unemployment

To reduce and relieve unemployment. 1012.7

Standards of labor

To improve standards of labor. 1012.8

In general

Otherwise to rehabilitate industry and to conserve natural resources. 1012.9

Means of execution of policy

As the means of executing this policy the Act prescribed the following instruments: 1013

(1) Codes of fair competition applied for by industries (sec. 3a)

(2) Codes of fair competition prescribed by the President (sec. 3d) 1013

(3) Voluntary agreements with or among persons in industry, labor organizations, and industrial organizations (sec. 4a)

(4) Agreements between employers and employees respecting standards of employment (sec. 7b)

(5) Limited codes of fair competition dealing only with standards of emoloyment, prescribed by the President (sec. 7c)

(6) Licensing to conduct business (sec. 4b)

(7) Restrictions upon imports (sec. 3e)

These means are discussed hereafter.

Conformity of means to purpose

Each of these means must, whenever employed, and in every respect, be in conformity with at least one of the purposes declared by Congress, and must not be contrary to any one of such purposes. The mission of this body of Substantive Guides is to determine what actions in particular situations so conform and what are contrary. 1014

Codes of fair competition applied for by industries

What codes of fair competition may properly contain in detail is described in succeeding sections. But there are certain antecedent general requirements, which, being provisions of the law, are subject to no waiver. These are contained in section 3 a of the Act. 1020

The policy of the Act

Codes must tend to effectuate the policy of the Act (sec. 3 a), as above set forth. 1021

Applicants must be representative

There are other types of codes, as set forth above, but this type comes into being by the approval of the President only upon the application of one or more trade or industrial associations or groups. The law expressly requires that the applicants be "truly representative of such trades or industries or subdivisions thereof" (sec. 3 a). To be truly representative an applicant group must include a sufficiently broad cross section of the industry to insure that the views of its members substantially correspond with those of the non-members. 1022

Nature of applicants

The applicants may consist of one or more trade associations, or of one or more trade associations with whom a group of individuals has joined for the purpose of presenting the code, or solely of a group of individuals. 1022.1

Aspects of representation

To be truly representative an applicant group must include enterprises of all distinctive types, such as-- 1022.2

(1) Various sizes.

(2) All significant types of locality, with regard both to sections of the country and population densities.

(3) All significant types of plant operation.

(4) All significant types of distribution methods.

Percentage of representation required

The applicant group should include a sufficiently high proportion of enterprises of each type so that the mere number of those included, as compared with those not included, will give rise to a strong probability that those who have been silent would concur if they chose to speak. For example, in an industry with widely scattered units, a group consisting of even less than half from each significant class or type, if properly distributed, might well give rise to the inference that such group reflected the views of the industry as a whole. On the other hand, in an industry containing some 20 members, well known to each other and readily accessible, a very high proportion of the 20 would have to be included within the group before it could fairly be inferred to reflect the opinion of the industry as a whole. 1022.3

Representation for particular purposes

Provisions proposed for a code which affect different members of the industry in varying degrees impose special requirements of representation. Thus, a prohibition of a business practice not previously regarded as essentially unfair, but nevertheless detrimental in unregulated form to the best interests of the industry, would require the representation of any significant class previously engaged in the practice. 1022.4

Authorization to act

Generally the association or group delegates to a committee the power to act on its behalf in formulating the code. It must be furnished with credentials showing the extent of its authority to act. Such authorization must be evidenced by the minutes of the meeting at which the committee was chosen, showing who was in attendance at such meeting, and what the vote was, and certified by the proper officer of such meeting. 1022.5

Inequitable restrictions upon membership

Applicant associations and groups must impose no inequitable restrictions on admission to membership therein. (Act, sec 3 a). In the case of trade associations such provisions are to be sought in the association's constitution and by-laws. In the case of groups previously unassociated, there requires only a showing that all members of the industry were invited to join. 1023

Definition of industry

In order that membership may be denied to no one in the industry, the definition of the industry in the association's constitution should be as broad as that contained in the proposed code. 1023.1

Membership restrictions

Membership should be automatically available to any member of the industry who agrees to pay his dues and (if the association wishes) comply with the code. Provisions reserving discretion to the association respecting admission to membership are objectionable unless there is a factual showing that they have not been invoked in the past. Any provision which would establish restrictions based on citizenship, race, color, creed, skill, time in business, etc., is definitely inequitable. 1023.2

Dues

Dues, unless nominal, must be proportionate to volume of business or some other reasonable factor. Dues of any substantial size should be explained by submission of typical budgets of the association. Initiation fees must not be unduly large. 1023.3

Voting

Voting on any basis other than one vote for each member should be justified by a showing that it does not discriminate against any class of members, particularly those doing a small volume of business. 1023.4

Expulsion

The association should not have power to suspend or expel its members except for retirement from the industry, violation of the code when such violation has been determined by a duly constituted administrative or judicial agency, violation of the by-laws, non-payment of dues or assessments, or judicially determined bankruptcy or insolvency. Permission of expulsion "for cause" or "for conduct prejudicial to the best interests of the association" is bad. 1023.5

Government of association

If there is a substantial delegation of authority to a board of directors or an executive committee, such board or committee should hold office for no longer than one year and should be responsive to the membership at large through the medium of special meetings subject to the call of a minority of the membership at large. 1023.6

Removal of inequitable restrictions

Upon determination that the constitution or by-laws of an association contains inequitable provisions the association should be requested at the earliest possible date to remove such provisions. Where it is advisable that a code be approved prior to the removal of such provisions, the code may be forwarded for approval if: 1023.7

(1) A written statement is obtained from the association, signed by an officer of the association that (a) the provisions will be removed or their removal urged, (b) the provisions will be made non-operative pending their removal, and (c) no members have been refused admission or expelled or are at the present time suspended because of the provisions, and

(2) The code contains a provision whereby the National Industrial Recovery Board is given the power to change the code authority if it finds the code authority is not truly representative.

(3) If either (1) or (2) is lacking, the order of approval must require that the inequitable provisions be removed within a stated period (generally 30 days) from the effective date if the association is to participate further in the activities of the code authority.

Monopolies

Codes must not be designed to promote, nor may they permit, monopolies or monopolistic practices. (Act, sec. 3 a). Fixed tests to determine this question cannot be laid down. It must rest upon an examination and appraisal of the effect of each code provision. Each code must contain an express prohibition of monopolies and monopolistic practices. (Model, 821). 1024

Tests for monopoly

Where there is any reason to fear monopolistic effect, the question should be examined from the following viewpoints: 1024.1

(1) Character and extend of existing competition.

(2) Reasonably anticipated effect thereon of code provisions.

(3) The factors, if any, including any provision tending toward price control, concerning which a question of tendency toward monopoly has arisen or might arise.

Record of particular industry

If the industry has a history under the anti-trust laws, actual cases which have been decided may indicate the points which have to be answered. 1024.2

Small enterprises

Codes must not be designed to eliminate or oppress small enterprises nor operate to discriminate against them. (Act, sec. 3 a). In part, this question overlaps that of monopoly, in that whatever tends to produce monopoly tends also, of course, to oppress small enterprise. There are also sources of such oppression which are apart from monopoly. Again, no fixed tests to determine this question can be laid down. The conclusion must rest upon an examination and appraisal of the effect of each code provision. Each code must contain an express prohibition of elimination and oppression of and discriminations against, small enterprise. (Model, 821). 1025

Facts to be examined

Determination of the effect upon small enterprises requires examination of the number of such enterprises which have joined in the application, the conditions affecting such enterprises before the submission of the code, and the probable effect of code provisions upon such conditions. 1025.1

Hearing

Where a code affects the services and welfare of persons engaged in other steps of the economic process, such persons shall have the right to be heard prior to approval of the code by the President. (Act, sec. 3 a). Since all codes do generally have such effect, hearing prior to approval is mandatory. 1026

Notice of hearing

The reasonable execution of this requirement necessitates adequate notice to all such persons of the time and place of hearing. 1026.1

Non-waiver of Constitutional rights

Neither the Government, nor any member of industry, waives or can properly insist that the other has waived any Constitutional right pertaining to the Government or to any individual by approving, assenting to, or cooperating under any code of fair competition (Ex. Order 6949). 1027

Jurisdiction of codes

Multiple coverage

Due to the complexity of the organization of business, it is impossible to avoid situations where one establishment will be under more than one code. It will be under a code only to the 1031

extent its products or functions are within the definition of the particular industry. Every effort will be made to encourage the alignment of industries and codes so that overlapping is prevented as fully as possible. 1031

Professional Functions

Codes will not be applied to professions in terms of functions. Such professional persons should be controlled, if at all, through the provisions of the code for the industry to which they are attached. 1032

The public interest

Every code provision must be examined as thoroughly from the standpoint of the public interest as from the standpoints of industry and labor. The public interest is that of the whole body politic--of everyone as citizen, consumer, and taxpayer. In determining the propriety of a particular provision, no interest is paramount; all three must be nicely balanced; each may have some concessions to make. It is often overlooked that frequently one interest, by accepting an apparent particular disadvantage, gains a great general advantage in the long run. Thus, the public interest, by conceding decent wages to labor and a reasonable profit to industry, ives hostages to fortune for the longer pull. But this is only a qualification upon the general principle that neither labor nor industry must benefit at the expense of the public interest. 1040

Amendment of codes

Right to modify codes

Section 10 (b) of the Act, empowering the President from time to time to cancel or modify any order, approval license, rule or regulation under the Act, is required to be inserted in each code. It should be set forth in full in all codes, including supplemental. (Model, 811). 1051

Amendment by industry

In addition, the right should be reserved to the industry to apply for amendments in the same manner, and subject to the same conditions, as in the case of applications for codes (Model, 812). The industry may delegate to the code authority the full power to represent it in applying for amendments, or it may reserve such power to itself. 1052

Supplemental codes

Where special conditions affecting any portion of an industry require special provision, a supplemental code may be applied for by such portion of the industry. Since the basic code applies generally to the entire industry, no supplemental code affects any of its provisions unless it expressly supersedes it. Of course, if the basic code provides that supplemental codes must be consistent therewith, no provision of any supplemental code may be inconsistant with a basic code provision. 1060

Regional codes

Except in most unusual circumstances, regional codes should not be permitted in industries which distribute on a nation-wide basis. The problems of industry cannot be solved on a piece-meal basis. 1070

Other codes and agreements

In so far as applicable, these substantive guides apply to other codes and agreements under the Act as well as to codes which are applied for by industries. 1080

Codes prescribed by the President

The President has not yet exercised his authority to prescribe codes (sec. 3 d) or limited codes dealing with standards of employment (sec. 7 c). Should he exercise such authority, it is to be assumed that such codes will accord with the policies applicable to voluntary codes. 1081

Agreements

President's Reemployment Agreement

The President exercised his authority under section 4 a by entering into the President's Re-employment Agreement with a very large portion of trade and industry. Its simple terms conformed to the policies for codes. These agreements have been largely superseded by codes. 1082.1

Other agreements

Both by express authority contained in the Construction Code and the general authority contained in section 7 b of the Act, the President has approved a number of agreements between employers and employees in that industry respecting labor standards. These have conformed to the policies governing codes. No other agreements, as provided in either section 4 a or section 7 b, have been approved. 1082.2

Licenses

The President did not invoke his authority to license business (sec. 4 b), and, by the terms of the Act, that authority expired on June 16, 1934. 1083

Restrictions upon imports

There have been relatively only a few applications for action as provided in section 3 e. Determination of such action is largely a factual matter and controlled by the circumstances in each case. No general policy has been developed in dealing therewith. 1084

Miscellaneous considerations

Necessity of factual showing

1091 It cannot be too strongly emphasized that each proposal of a code provision requires a factual showing of its necessity and its propriety. It is not sufficient that an industry desires a particular provision. The need must be shown. The propriety must be shown. Of course, there are certain classes of provisions (as attested trade practices) the need and propriety of which have been shown generally and for which a particular showing is unnecessary; and there are certain standards (as in the case of hours and wages) which are presumptively proper. But as to provisions other than these, NRA cannot fairly be asked to accede to a proposed provision unless its need and its propriety are clearly shown.

Degree of industry support required for proposed actions

1092 It is not the intention of democratic policy that merely because a trade majority decides one particular method of doing business is more convenient than another it should be written into law. Majority action must be qualified as follows:

(a) If there is an important social gain to be secured through a mode of action upon which the great majority of the industry is agreed NRA is bound to respect it.

(b) If the overwhelming majority of an industry wants to bind all members to a course of action in which there is no particular harm and to which there is no strong objection from any source NRA may accommodate itself to the sentiment.

(c) If there is no social issue at stake, and if the objective of the majority is definitely opposed by the minority or by a considerable group of the customers of the industry, there is clearly no obligation on NRA to sanction the operation of such provisions under these conditions.

Enforceability

1093 Since law is useless beyond the point to which it is capable of enforcement, no mandatory provision should be included in any code if it is incapable of reasonable enforcement. This principle does not prevent the inclusion of provisions which are otherwise acceptable in the form of standards which define and encourage right conduct without commanding it.

Uniformity of language

1094 In the interest of simplicity of administration and ease of securing compliance, it is highly desirable that all codes follow the standard phraseology in the model code.

Trades

Industry and trade are distinguished in the Act (sec. 3 a), but for convenience and brevity both are referred to in these Guides as industry. The word will be understood to have equal application to trade. 1095

DEFINITIONS

In order to avoid ambiguities, any term whose intention may be doubtful should be carefully defined. Definitions may also be carefully defined. Definitions may also be used to facilitate brevity of expression; e.g., the definition of "Board" as "National Industrial Recovery Board" permits the use of the single word throughout the code. 1100

Geographical application

In the absence of strong reason to the contrary, codes should have full geographical application and should, therefore, cover territories and insular possessions as well as the States, except that the Philippine Islands are not within the scope of the Act. The codes have this broad application without requirement of specific definition. Short of naming all of the territory affected, any terms which may be used by way of definition are vague, and it is, therefore, desirable to avoid attempted definition. 1110

Application to territories and insular possessions

While, in the absence of strong reason, codes should have complete geographical application, it is recognized that conditions in territories and insular possessions may demand special treatment. These are best provided for by supplemental codes, rather than by independent codes. 1111

Meaning of "United States"

Adjudicated cases seem to define "United States" to include Alaska and Hawaii, but no insular possession. The language of section 7 d might be construed to modify this application. Consequently, the expression is indefinite and should not be used. If exceptional reason exists for territorial limitation, then that territory to be excluded should be specifically mentioned. The territory in question comprises Alaska, Hawaii, Puerto Rico, the Canal Zone, and the Virgin Islands. 1112

Meaning of "Continental United States"

The term, "continental United States, is also vague since Alaska is a portion of the continent and it is not clear whether the intent is to include or exclude it. The use of the term should be avoided. 1113

Industry or trade

Since the definition of the industry or trade determining the applicability of the code, the greatest care is essential in the construction of this definition (Model, 201). 1121

Trade distinguished from industry

It is probable that industry, in its broad sense, includes trade. But trade is ordinarily understood as referring to the distributive processes as distinguished from the productive. 1121

Definition should be exclusive an well as inclusive

Exclusion from the definition of activities not intended to be covered under the code is equally as necessary as the inclusion of activities intended to be covered. 1122

Overlapping

It is most essential that no definition overlap or conflict with the definition in another code. 1123

Activities customarily incidental

All activities customarily incidental to the conduct of a business are included without necessity for specific enumeration in the definition. Thus the definition of a manufacturing enterprise includes the purchase of raw material and the primary sale of the finished product whether or not the definition specifically enumerates them. In case of doubt, however, it is better to specify the activity. 1124

Supplemental activities which may not be incidental

When it is desired to include activities not obviously incidental, such activities should be carefully specified. Thus, even where it is customary for manufacturers to install their product, it is desirable that the definition specifically cover this activity. Of course, in the absence of representation of other installers, the definition can cover only installation by manufacturers. 1125

Controlled enterprises

In order to prevent evasion of code provisions, the definition should include any controlled enterprise which performs any of the functions incidental to the industry. Otherwise, by the organization of sales affiliate, the primary sale of the product might be removed from the operation of the trade practices of the code. 1126

Conjunctive or disjunctive character of several functions

Where the definition of industry includes several activities, care should be taken to indicate whether the performance of all or only one is essential to membership in the industry. The word "and" is not always clearly to be taken in the conjunctive sense. Thus, where an industry is defined as the "manufacture and installation" of a product, it may not be clear whether one who manufactures but does not install is a member. 1127

Scope of "manufacture"

In manufacturing codes the word "manufacture" should be carefully defined, particularly with reference to whether it is intended to include mere portions or the complete process of producing a completed article; whether it is intended to include only concerns performing the actual work or to include also those which have the products physically produced for them by contract. (Model, 202). 1128

Member of industry

A member of the industry or trade is ordinarily best defined as any individual, firm, or corporation engaged in the industry (Model, 203). 1130

Exemption in towns under 2500

Employers engaged only locally in retail trade or local service trades or industries who operate not more than three establishments and whose place or places of business are located in a town or towns each of less than 2500 population, and not in the immediate trade area of a city or town of larger population, as determined by the Administration, are exempted from those provisions of approved codes which relate to hours of employment, rates of pay, the minimum price at which merchandise may be sold or services performed, and the collection of assessments, except in so far as any such employer shall signify to NRA his intention to be bound by such provisions. (Ex. Order 6710). 1131

Application to members

Codes bind all members of the industry regardless of assent or dissent, except that any provision whose application specifically requires assent is not binding without such assent. 1132

Classification of members

Members of an industry should not be classified into groups, subject to important differences in restrictions or provisions, when the demarcation between such groups is arbitrary or so narrow that a small difference places employers in one group or the other. As for example, where a man with ten employees is in one group, but with nine would be in another. 1133

Requirement of "establishment"

Since the meaning of "establishment" is incapable of exact definition and is, therefore, open to abuse, it is improper to stipulate as a qualification for membership in an industry that each member shall have an "established" place of business. 1134

Separate conduct of business

To require that each member conduct his business under the code separately from other businesses in which he may be engaged is likely to cause hardship to small enterprise and is, therefore, improper. 1135

Employer

Employer is ordinarily best defined as any member of the industry or trade by whom any employee is employed or compensated (Model, 212). Since a member is not necessarily an employer, the definition of the latter does not obviate the necessity for definition of a member. 1140

Employee

Employee is ordinarily best defined as any person engaged in the industry or trade except a member. (Model, 211). 1150

Classes of employees -- clarity of definition

Classes of employees subject to varying conditions of employment should be carefully defined so as to avoid ambiguity. The term "processing employees," for example, is extremely vague, leaving doubtful whether foremen, timekeepers, cleaners, and other performers of incidental tasks are intended to be included. Likewise, the expression "laborers," which sometimes is intended to refer only to manual labor, and sometimes more broadly. Of course, it is desirable, so far as possible, to avoid any discrimination between classes of employees. Where it is necessary, it is best to specify and define particular excepted classes (e.g. watchmen, firemen, truck drivers), thus avoiding any necessity for characterization of the general body of employees. 1151

Classes of employee -- reasonableness of definition

Definitions of particular classes of employees should not contain requirements materially at variance with common acceptation, so as to result in hardship and discrimination. For example, many competent skilled workmen might be barred by a definition requiring a stated number of years' experience. 1152

Light occupations

A light occupation is one requiring neither substantial physical exertion nor any educational qualifications. In particular industries which distinguish light occupations, such occupations should be carefully defined. 1153

Professional employees

The words "professional employees" should not be used without a list of the particular occupations intended to be included under the term, since experience has proved that standing alone it is so indefinite as to cause considerable uncertainty in allocating individual classes within or without this category. 1154

Apprentice

An apprentice is a person of at least 16 years of age who has entered into a written contract with an employer which provides 1155

for at least 3000 hours of reasonably continuous employment and participation in a program of training approved by an agency designated by the Secretary of Labor. (Ex. Order 6750-C; Model, 213). A code may make other provisions, but any employer may elect to follow these. If the code purports to follow the executive order, its provisions must not be less than the minimum established thereby. (Fed. Comm. on Appr. Training, March 25, 1935). 1155

Learner

A learner is an employee who has worked less than a specified number of hours (consecutive or non-consecutive) at the occupation in which he is engaged. (Model, 241). Ordinarily such number of hours should not exceed 240. No upper age limit should be placed on learners. 1156

Sundry definitions

Act

For convenient reference the term "Act" should be defined as meaning Title I of the National Industrial Recovery Act of June 16, 1933. 1191

Southern states

In general, the southern states may be said to comprise Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, New Mexico, and Texas. 1192

Home of living quarters

The terms "home" or "living quarters" as used in homework provisions mean the private house, private apartment, or private room, whichever is the most extensive, occupied as a home by the employee and/or his family (Model, 232). 1193

Population

Population is determined by reference to the latest figures of the U. S. Bureau of Census. (Model, 223). 1194

Effective date

A code becomes effective upon the date of its approval unless some other date is specifically stipulated in the code. Ordinarily it is desirable to define the effective date as the second Monday subsequent to the date of approval. (Model, 841). 1196

Accountant

Some codes vest duties in public accountants, who are quite generally referred to as "certified public accountants." This is a common usage which overlooks the fact that there are other public accountants equally suitable to perform the same work as certified public accountants. Whenever any code provision im- 1197

poses duties on public accountants, therefore, it should read in manner such as the following: "by a certified public accountant or by an accountant having the equivalent in qualifications and ability of a certified public accountant, provided, however, that as to any service to be performed in any particular state or governmental subdivision of the United States, such accountant in any event shall have the qualifications required by law in such state or governmental subdivision of the United States for the performance of such service." 1197

Impartial or confidential agency

An agency, to be impartial or confidential, must be unbiased as between the code authority and the industry as a whole, and as between individual members of the industry, particularly where one of the members concerned may be a member of the code authority. Obviously, therefore, the code authority cannot act as an impartial or confidential agency, nor can its secretary. The approval of NRA is essential to the determination of its impartial or confidential character. 1198

HOURS

Employers shall comply with the maximum hours of labor approved or prescribed by the President (Act, sec. 7 a). Accordingly, every code will make provision for maximum daily and weekly hours. 1200

Weekly hours

The limitation placed upon hours must necessarily be a compromise between the requirement of reemployment and the ability of industry to adjust itself to the change in operating conditions. Experience under present codes shows that, for the majority of industry, 40 hours per week is the lowest maximum presently practicable. Accordingly, in the absence of convincing showing to the contrary, no employee will be permitted to work more than 40 hours per week. (Model, 301,302). 1210

Hours in allied industries

Where hours have been established in one code, there is a presumption for similar hours in the codes of allied industries with like operating conditions, both because of the finding of fact in the first instance and because disparate hours might be discriminatory. 1211

Exceptions: by industries

Maximum hours may be fixed in particular industries at more or less than 40 per week upon convincing evidence of reason therefor. The following are some examples of acceptable cases. 1220

Continuous process industries -- 36 hours

Some industries operate on continuous processes employing four shifts. In such cases, where it is practicable to suspend operation on Sundays, each employee will work 36 hours per week, and his hours may properly be so limited. 1221

Continuous process industries -- 42 hours

If the impracticability of suspension of operation on Sunday is demonstrated, maximum hours of 42 may be permitted. But see II-1271 respecting provisions for days off. 1222

Retail trades

Employment in retail trade has customarily been at longer hours than in industry generally, and to reduce such hours presently to a maximum of 40 is recognized as impracticable. The hours permitted should be reasonably proportioned to the customary hours of store operation. 1223

Special classes of employees

Other than the standard maximum hours may be provided for special classes of employees upon adequate showing of necessity therefor. (Model, 303). Certain classes of employees have been generally recognized to be properly so excepted, viz: 1230

Service employees

The normal operation of a plant is sometimes dependent upon certain service employees working longer than the general body of employees. Thus, the presence of firemen and engineers is often required earlier than other employees in order that power and heat may be available. Maintenance employees, shipping crews, and truck drivers may be required for longer hours for like reasons. Where such necessity is shown, longer hours are proper. Such hours will generally be limited to 45 per week, since one hour additional per day will ordinarily meet the requirement. 1231

Executives and supervisors

The time of executives and supervisors and their secretarial assistants is not always amenable to limitation. It is proper, therefore, to permit no limitation of their hours. But to insure that this exception be not too broadly applied, it will be limited to persons whose rate of pay amounts to not less than $35 per week. 1232

Professional, scientific, and technical employees

For similar reasons, professional, scientific, and technical employees may be excepted from limitations of hours, subject to the same condition respecting rate of pay. Such classes of persons should be carefully defined to insure certainty in the application of the provision. 1233

Commission and traveling salesmen and collectors

The earnings of commission salesmen and collectors depend peculiarly upon their own efforts. Not only would it be unfair to deny them full scope for their energy, but such a provision would be difficult of enforcement. Accordingly, no limitation of their hours is required. Nor is it practicable to place limitations upon salesmen and collectors who travel. 1234

Watchmen

The work of watchmen being less arduous than other forms of employment, they may be employed for not more than 56 hours per week. 1235

Apprentices

An apprentice (II-1155) may work in excess of the code hours upon authority to his employer from the agency designated by the Secretary of Labor. (Ex. Order 6750-C; Model, 409). If code hours are 40 or less per week, the hours of instruction under pub- 1236

lic authorities may be in addition thereto, but the total hours shall not exceed 44. (Fed. Comm. on Appr. Training, March 25, 1935). 1236

Mixed employment

It is desirable to insert a specific provision with relation to the hours of employees performing work in two categories of employment which have different limitations of hours. 1237

Averaging of hours

With certain limited exceptions, any averaging of hours is undesirable. Sufficient flexibility is available from the provision permitting unlimited overtime at the overtime rate of pay (II-1250). 1240

Office employees

The hours of office employees may be averaged over 5 weeks in order to provide for the monthly peak of accounting, billing, collecting, and inventorying. But such employees should in no week be permitted to work more than 48 hours, should be limited to 9 hours in a day, and the privilege of one day off in 7 should not be impaired. 1241

Continuous process employees

The hours of continuous process employees may be averaged over two weeks in order to provide for days off. 1242

Watchmen

For similar reasons, the hours of watchmen may be averaged over two weeks. 1243

Employment for less than period of averaging

Where hours of labor are permitted to be averaged, the code should make definite provision for the situation arising where a worker is employed for less than the permitted period. Generally, pay at overtime rates should be required if the prorated hours exceed the average limitation. 1244

Time lost due to inclement weather

In certain outdoor industries where working time is dependent upon weather, it is proper to permit time lost due to inclement weather to be made up in subsequent weeks. But this should be limited to the 5 weeks ensuing upon such inclement weather, hours per day should nevertheless be limited to 9, and it should not impair the privilege of one day off in 7. 1245

Overtime

The limitation of hours with no exception to take care of fluctuation in the load factor, or even with provision for certain peak periods, places too great an administrative burden upon industry and NRA, and deprives industry of the simple elasticities to which it is abundantly entitled. On the other hand, a requirement of extra pay is a sufficient encouragement to hire new help and therefore a sufficient deterrent against abuse of an overtime privilege. Accordingly, overtime may be permitted without limitation, conditioned upon the payment of 1½ times the employee's normal rate of pay. 1250

Peaks and tolerances

For reasons stated in II-1250, peaks and tolerances are unnecessary and undesirable. 1251

Emergencies

Overtime work on account of emergencies should be subject to the requirement of overtime pay as specified in II-1250, and therefore need not be specially provided for. 1252

Extra pay for overtime

All working time permitted to any employee in excess of his normal maximum hours will be compensated at 1½ times his normal rate of pay. In the case of piece workers, the overtime rate is 1½ times the normal piece rate. 1253

Daily hours

No employee will be permitted to work more than 8 hours in any 24 (Model, 301, 302), except where in special cases the weekly hours may exceed 40, and in such cases the daily hours will be limited to 9 in any 24. 1260

Days off

No employee will be permitted to work more than 6 consecutive days. Certain exceptions are permissible, viz: (Model, 304). 1270

Workers on continuous processes

In the case of industries with continuous operations or with rotating shifts, not more than twelve days may be permitted in any fourteen day period. 1271

Watchmen

Watchmen may be permitted to work not more than thirteen days in any fourteen day period. 1272

Emergency maintenance work

Maintenance and repair men may be permitted to work on days otherwise prohibited where such work is necessary to the protection of life, safety, health, or property, or to the continued operation of the plant. For all work on such days employees will be paid not less than 1½ times their normal rate of pay. 1273

Holidays

In addition, employees will not work on holidays. Since holidays vary among the several states, the term will be specifically defined as comprising New Year's, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. 1274

Sundry provisions

Idle time

Time required to be spent at the place of employment or in connection with the discharge of duties of such employment, is a portion of the time of employment even though the employer may have no work for the employee to perform. An employee is entitled to his regular rate of pay for such time, including the overtime rate when applicable. (Model, 431). In view of the varying situations in different industries, it will be necessary to adapt the language of the code provision thereto. 1291

Employer working as employee

In a number of industries in which there are many small units, it has been alleged to be unfair competition for working employers to be permitted to work more than the maximum hours allowed for employees. The importance of the problem depends upon the character of the industry. In most cases, the operations of such persons are of such little significance in the total activity of the industry as to have little effect. Where they are of import, the question immediately arises whether it is an industry in which regulation is feasible. Of course, it is proper to forbid the evasion of labor provisions by giving proprietorship status to persons who are really employees; in most instances this type of evasion is prevented by the prohibition of subterfuge (II-1492). 1292

Hours of operation

Proposal to limit the hours of operations by fixing starting and finishing hours may proceed either from a desire to regulate production or from an intent to support enforcement of labor provisions. It is a type of meticulous regulation not to be encouraged. In its former aspect, it is discussed in connection with the control of production (II-1650). Where there is a definite showing that the limitation of shop hours is needed as an important support to enforcement of labor provisions, it may be entertained, but only if there is no effect to restrict production 1293

and where it will cause no embarrassment to other industries. The limitation of shop hours cannot be applicable to employers or proprietors (see II-1292). 1293

Split shifts

In certain industries the practice of breaking the working day of the employees into two or more periods divided by periods of lay-off for several hours or more has been recognized as a particular evil. In such cases there should be appropriate requirement to make the hours of work consecutive or as nearly so as feasible. 1294

Night work

The labor of man should, desirably, be confined to the daylight hours, and therefore employment should be limited to a single shift. Those industries accustomed to the use of more than one shift should undertake consideration of the practicability of such a limitation. Particularly desirable is the elimination of the "graveyard" shift. 1295

Dual employment

No employee may be permitted to work for two or more employers in excess of the time he might work for a single employer (Model, 305). 1296

WAGES

Employers shall comply with the minimum rates of pay prescribed by the President (Act, sec. 7 a). Accordingly, every code will make provision for minimum hourly or weekly wages, or both, and no employee should be excepted therefrom. 1300

Standard for minimum wage

The requirement of a minimum wage is that it afford to the employee a decent standard of living. This guide is, of course, incapable of exact application. It will vary according to considerations of geography, population, and price levels. Other factors will be pertinent in particular cases. No absolute calculation is practicable. The wage actually paid in 1929 will be of considerable significance in most cases as a test of the application of the standard. 1310

Amount of minimum wage

Analyses of present conditions show that minimum wages of 40 cents per hour or $15 per week for 40 hours conform reasonably to this standard. There is therefore a presumption in favor of these rates. For departure from them for whatever reason the burden of adequate showing is on the proponent. (Model, 401, 402). 1311

Weekly wage as a minimum or rate

In any provision for a minimum weekly wage, it should be made clear whether it is intended as a minimum regardless of the time actually worked, or whether it establishes a rate which may be prorated when less than a full week is worked. 1312

Wage rates in allied codes

Where rates have been established in one code, there is a presumption for similar rates in the codes of allied industries, both because of the finding of fact in the first instance and because disparate rates would be discriminatory. 1313

General exceptions

Geographical differentials

Factors affecting geographical differences in costs of living are difficult of evaluation. Generally, it may be accepted that lower costs in the south (II-1192) warrant a differential of $1 a week in minimum rates. Yet it must be accepted that there is no actual line at which the costs divide; that the difference in costs is one of gradual geographical progression; and that arbitrary dividing lines may in many cases provide discriminating competitive situations. Accordingly, it is necessary to look at the conditions in each industry and endeavor to draw the line in a practical fashion. Sufficient evidence may be adduced in some cases to warrant a third intermediate zone. 1321

Population differentials

The differences in cost of living incident to different densities of population are also difficult of evaluation. The presumption may be accepted, however, that such differences justify in each geographical territory a decrease in the basic minimum by the following amounts: 1322

$1 per week in cities of from 100,000 to 500,000 population.

$2 per week in cities of from 25,000 to 100,000 population.

$3 per week in cities of from 2500 to 25,000 population.

$4 per week in places of less than 2500 population.

In order to support such differentials in particular cases, however, it is essential for the proponents to show that no competitive discrimination will result therefrom. The propriety of such differentials may be rebutted by showing that equivalent differentials have not, in fact, existed in the industry in the past.

Industries allied to agriculture

Since it is recognized that living costs in agricultural communities are relatively low, there is a presumption of propriety of lower wage rates in industries allied to agriculture. 1323

Special classes of employees

Light occupations

If convincing evidence is adduced that light occupations (II-1153) exist in an industry, a lower minimum may be justified. Based on the considerations stated in II-1311, the appropriate wage is 35 cents per hour. 1331

Protection of women from discrimination

Where women perform substantially the same work as men, they will be paid the same pay; and where they displace men at substantially the same work, they will be paid the same as the men they displace (Model, 407). Important differences in the conditions as well as the actual processes of work should be recognized in interpreting the phrase, "substantially the same work." For example, since work at night is more onerous than in daylight hours, it is not "substantially the same work." 1332

Apprentices

A person may be employed as an apprentice (II-1155) at a wage lower than the code minimum upon authority to his employer from the agency designated by the Secretary of Labor (Ex. Order 6750-C; Model, 409). The beginning wage shall not be less than 25% of the basic wage for journeymen, and the average wage for the entire period not less than 50%. (Fed. Comm. on Appr. Training, March 25, 1935). 1333

Junior employees

In some exceptional cases, a minimum of 80% of the basic minimum has been permitted for junior employees such as office boys and me and messengers -- generally minors. (Model, 404). To justify such an exception there must be adequate showing that the work is light and unskilled and that the exigencies of the industry require. Where such lower rate is permitted, the number will be limited to 5% of the total comparable class of employees (factory or office), but every employer will be allowed at least one such employee. 1334

Handicapped workers

Regardless of provisions in particular codes, a person whose earning capacity is limited because of age, physical or mental handicap, or other infirmity, may be employed on light work at a wage below the code minimum, if the employer obtains authorization from the State authority designated by the U. S. Department of Labor. Each employer must file monthly a list showing the wage and hours of such persons employed by him. (Ex. Order 6606-F; Model, 408). Unless specifically approved by the Department of Labor or permitted by the code, certificates will not be granted for more than 5% of the working force in an establishment, nor for wages of less than 75% of the code minimum. However, one such person is permitted to every establishment. (Instructions, Department of Labor, November 8, 1934). 1335

Watchmen

By reason of their relatively lighter work, the hourly rate of watchmen may be less than that of other employees, but in no event will such rate be so low as to result in a less wage per week than received by employees at the basic minimum (Model, 403). 1336

Compensation on commission basis

The fact that an employee is paid on a commission basis is no reason for excepting him from the minimum limitation. 1337

Mixed employment

It is desirable to insert a specific provision with relation to the wages of employees performing work in two categories of employment which have different wage provisions. 1338

Learners

A sub-minimum wage for learners (II-1156) is unnecessary in most industries. Where an industry needs highly skilled workers, the apprenticeship provisions (II-1333) are available. Learner provisions are open to the abuse of resulting in establishing a sub-minimum wage group. 1340

Requirements for learner provision

Provisions for learners may be permitted in exceptional circumstances but the burden of proof rests on the industry to show— 1341

(a) That there is a need for new employees who have had no previous experience in the industry;

(b) That the unskilled rate is not applicable to the new employees; and

(c) That the occupations for which learners are desired do, in fact, require a significant learning period.

Minimum wage for learners

No learner will be paid less than the standard piece rate, if such be the method of compensation, and in no event less than 80% of the basic minimum. (Model, 410). 1342

Number of learners

The number of learners employed in each establishment may not exceed 5% of the total number of employees, but in any industry where learners are permitted each employer may employ at least one. (Model, 410). 1343

Evidence of completion of period

Upon termination of a learner's employment, the employer will sign and give him a card showing the occupation and the number of hours employed as a learner. (Model, 411). When a learner has completed his learning period, the employer will sign and give him a card evidencing such fact. (Model, 412). 1344

Piecework compensation

Minimum rates apply irrespective of whether an employee is actually compensated on a time, piecework, or other basis (Model, 405). 1350

Period for Computation of piecework pay

In applying the minimum wage restriction, compensation 1351
is to be computed on the basis of not more than a 7-day period. Where the conditions of production in an industry warrant, the period may be reduced. Fluctuation in earnings due to faulty management should not be the risk of the employee.

Overtime rates for pieceworkers

Where overtime is utilized, piece rates will be in- 1352
creased in the same proportion as overtime hourly rates.

Rejected piecework

No compensation can be claimed by a pieceworker for 1353
spoiled work, but this does not affect the obligation to pay him the minimum wage.

Part piecework pay

Where an employee is engaged partly on a piece rate 1354
basis and partly on an hourly basis, he must be paid at least the minimum while on an hourly basis, regardless of the amount of his earnings while on a piece rate basis.

Wages above minima

In general, the function of the codes is limited to fixing 1360
minimum wages, and there is no obligation or express authority to devise a schedule of wages for all the kinds of work comprised by an industry. To do so incurs a risk of freezing such wages, and thus setting a maximum contrary to the prohibition of the Act. Further, the Act itself, in section 7 a, provides a more fluid method for determining such wages. This general rule is subject to certain exceptions, however, viz:

Special kinds of employment

As has already been indicated, it is proper to fix 1361
minima for special kinds of employment, as office employees, watchmen, and apprentices.

Different rate bases

Where there are two or more types of employment with 1362
substantially different characteristics, there may be adequate reason for differing minima. Thus, office employees, who are customarily paid on a weekly or semi-monthly basis, may have a minimum different from that of factory employees, who are customarily paid on an hourly basis. So also, in mining industries, there may be a distinction drawn between employees whose duties take them below the surface of the earth and those whose duties do not.

Minima for skilled workers

A minimum wage may be established for skilled workers as distinguished from the unskilled workers to whom the basic minimum is applicable. Care should be taken, of course, accurately to define the term "skilled workers" according to the custom of the industry. 1363

Wage schedules

Where wage schedules, establishing minimum hourly or piece rates for various classes of workers, have been arrived at by collective bargaining, it is proper to include such wages in the codes, since the method prescribed by section 7 a has been followed. This exception applies largely to industries, such as the garment trades, where the negotiation of rates has become settled practice. 1364

Adjustment of wages above minima

The general reasons why wage schedules should not be included in codes do not prevent a reasonable measure of protection to employees paid in excess of the minima. This may be afforded by a provision which will restrict the reduction in weekly earnings to a reasonable relationship to the reduction in hours. Where the reduction in hours is small, there should be no reduction in weekly earnings. In either case, the percentage of reduction in weekly earnings should not exceed one-half of the percentage of reduction in weekly hours. In no event should hourly rates be reduced. (Model, 406). 1365

Pre-existing standard

If it is found desirable to make use of pre-existing conditions to determine hours or wages, it should be made clear what is the base upon which the standard is to be calculated--whether the industry as a whole, the individual plant, the particular class of employee, either throughout the industry or in a particular plant, or the individual worker. It should also be definitely stated how, if at all, the standards are to be applied to instances not existing upon the date selected for determining the standards. 1366

Sundry provisions

Manner of payment of wages

Payment of wages will be in lawful currency, or by negotiable check or draft, payable on demand at par, when reasonable facilities for negotiation are available. Pay periods may not be longer than half a month, nor the holdover longer than five calendar days. Wages will be exempt from deductions, except those voluntarily consented to by the employee or authorized by 1391

law. Employers and their agents may not accept rebates. 1391
(Model, 421, 422).

Dismissal wage

The development of the practice of providing a dis- 1392
missal wage is undoubtedly desirable. It is not conceived to be the function of NRA, however, to extend general regulations of hours and wages into this area. Such a provision may be included in a code if the industry desires.

OTHER CONDITIONS OF EMPLOYMENT

1400 Employers shall comply with other conditions of employment approved or prescribed by the President. This provision is required to be included in every code. (Act, section 7 a)

Collective bargaining

1410 Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. This provision is required to be included in every code (Act, section 7 a).

Free choice of organization

1420 No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing. This provision is required to be included in every code (Act, section 7 a). No provision which attempts to interpret this or the preceding provision, or which attempts to qualify the industry's assent thereto, may be included in the code.

Child labor

1430 It is generally accepted that the employment of children represents an unfair method of competition. The employment of persons under 16 years of age will be forbidden (Model, 501). Such narrow exceptions as may be permitted, as below indicated, require demonstration of propriety beyond a reasonable doubt. Of course, where industries desire to set higher standards, they should be encouraged.

Hazardous occupations

1431 Employment in hazardous occupations of persons less than 18 years of age is forbidden. In the absence of evidence of necessity to the contrary. this should be stated as prohibition of all employment of persons under 18 years except in specified occupations (as office boys and girls, messengers, etc.) (Model, 501). Where the prohibition is simply of hazardous occupations, it is necessary for the industry to submit a list of such occupations within two months. Where the entire operation of the industry is hazardous , or where the industry is generally free of employment of youths at the present time, the provision can be greatly simplified by setting a blanket minimum of 18 years.

Exceptions to 16-year limit

The only permissible exceptions to the 16-year limit are 1432
for part-time employment which does not interfere with schooling nor deprive children of reasonable opportunity for play. Thus a limited number of hours may be permitted for employment of children over 14 years of age on curb service at drug stores, or in the delivery of newspapers or magazines. The burden is on the proponent of such employment to show that it benefits employee as well as employer. It is essential in such cases that the scope and conditions of the employment be carefully defined.

Evidence of age

An employer will be deemed to have complied with the age 1433
provisions if he shall have on file a certificate signed by the authority in his State authorized to issue such certificate.

Employment of minors by parents

In the application of labor provisions to minors em- 1434
ployed by their parents, laws such as relate to compulsory shcooling furnish useful analogy. These are universal in their conviction that the proper development of children is sufficiently important to outweigh the judgment of the occasional parent who may consider schooling unnecessary. But due regard must be had for the fact that performance of occasional chores connected with the business of parents is natural enough, does not constitute employment in the real sense, and is harmless so long as it does not interfere with the health or schooling of the children.

Safety and health

Every employer must make reasonable provision for the safe- 1440
ty and health of his employees at the place and during the hours of employment (Model, 523). If the industry wishes to recommend standards to be used only as a basis for educational work, it may do so. If it wishes to recommend certain mandatory standards, it may do so. In any event, the relationship of NRA is a cooperative one. It should be noted that a special committee of experts has been established which will both assist industry in developing standards when desired, and advise NRA as to approval of any proposed standards.

Industry committee

It is desirable that each industry create a committee on 1441
safety and health which will study the number and causes of accidents and health hazards in the industry and report a comprehensive program.

Details of program

The program for safety and health should consider the 1442
following:

(a) A statement of the average accident experience of the industry; a comparison of the experience of employers most successful in reducing accidents; and a plan for uniform accident reporting in the industry. 1442

(b) Preparation of a statement showing the possible benefits to individual employers, individual employees, and the industry as a whole, through continuous organized safety efforts.

(c) A recommended plan for organized safety work for various types and sizes of companies.

(d) Minimum standards for safety and health for the industry.

Safety and health in homework

In industries in which homework is permitted, such work will be prohibited in any homes or buildings which are unsanitary or unsafe on account of fire risks. 1443

Stabilization of employment

Every industry subject to seasonal or other fluctuations in employment should undertake the study of its situation in order to devise ways and means for the stabilization of employment to the utmost extend practicable. 1450

Homework

Homework, limiting the term to mean industrial work done in the home (II-1193) for wages paid by an outside employer, is a form of labor which, despite arguments of convenience and low cost, has usually been accompanied by low wages, long hours, and poor working conditions. Furthermore, it creates a state of competition unfair to those employers who maintain establishments where labor conditions can be regulated. Present NRA policy is the result of a long period of study by a special committee. 1460

General policy

Homework should be discouraged except where such action would work undue hardship. 1461

Conditions under which homework may be permitted

Though an industry can show that complete abolition of homework will not be in the public interest, it should nevertheless be restricted so far as possible, endeavoring to make the conditions of home workers comparable to those of factory workers. While the provisions of the next paragraph are conditions on the prohibition of homework, they also express a proper measure of restriction, and should be broadened only upon strong showing (Model, 531). 1462

Exceptions to prohibition of homework

Every prohibition of homework, except in the food or allied products industries which contain prohibitions of the manufacture or processing of food in homes, must permit a person to engage in homework at the same rate of wages paid in the factory if a certificate is obtained from the State authority designated by the Department of Labor, provided, 1463

(a) Such person is physically incapacitated for work in a factory or other regular place of business and is free from any contagious disease; or

(b) Such person is unable to leave home because his or her services are absolutely essential for attendance on a person who is bedridden or an invalid and both such persons are free from any contagious disease.

The employer shall keep such certificate on file and shall file with his code authority the name and address of each worker so certificated (Ex. Order 6711-A).

Problems in particular industries

Contracting of work

The problem of contracting out work is not a general one, but is confined to particular types of industries, being most prevalent in the garment trades. This practice is susceptible of use as a means of evasion of codes, and should be so regulated as to prevent such misuse. In most cases it should be possible to do this by careful draftsmanship of the definition so as to bring such contractors under the code. Where this is not deemed effective, the code should prohibit contracting out work unless the contract includes a requirement to abide by the code provisions (Model, 552). Other provisions may be shown to be necessary in particular cases. 1471

Company towns and stores

The problem of the company town is found only in certain industries. No employer may require as a condition of employment that his employee live in a house or buy in stores owned by the employer (Model, 541). Of course, exceptions will be necessary in some particular instances, as where maintenance men must of necessity live on company property, but in such cases the nature of the workers so excepted and some fixed limitation on their number should be specified. 1472

Increase in work load

The problem of increase in work load is an acute one in a number of industries, but a difficult one to deal with in codes. Code provisions which attempt to solve the problem by rigid prohibition of changes in work loads and assignments do not constitute a sound approach. The problem is best dealth with by collective bargaining arrangements between employers and employees. Any attempt at 1473

control through code provisions must be addressed to the conditions in a particular industry. 1473

Existing laws and agreements

NRA, in seeking to establish minimum standards, is not necessarily defining the minima which represent the best social standards. It must not break down higher standards already set. Therefore, such existing standards, while not incorporated in the codes, will not be affected by the codes (Model, 524). 1480

Laws

No code provision supersedes any Federal, State, or municipal law which establishes more stringent requirements as to age of employees, wages, hours of work, or general working conditions than are established in the code. 1481

Agreements

No code provision supersedes any agreement between employees and employers which provides higher wages, shorter hours, or better working provisions than those prescribed in the code, or which prescribes specific methods of wage payment. 1482

Workmen's compensation

Workmen's compensation is generally covered by State legislation and should be dealt with in codes only when a clear case can be made that the variation among State laws results in undue hardships in certain areas. 1483

Sundry provisions

Posting of labor provisions

Every employer must post and keep posted the labor provisions of each code under which he operates, in accordance with rules and regulations prescribed by NRA (Ex. Order 6590-B; Model, 525). 1491

Evasion by subterfuge

Codes will specifically prohibit any attempt at evasion by subterfuge, such as by reclassifying employees, or the duties of occupations, or change in method of payment, or by firing and rehiring (Model, 521). 1492

Enticement of employees

While in certain instances the enticement of extremely skilled employees or those who are familiar with confidential information has become a definite problem, a prohibition of enticement in general terms prevents employees from having the freedom of the labor market in their efforts to better their conditions of employment. Such a cure is far worse than the evil itself, and, 1493

therefore, employees should be excepted from general enticement clauses. In those cases where a definite need can be shown to exist the prohibition should be restricted to specified classes of employees. 1493

Dismissal

For complaints

No employer shall dismiss, demote, or otherwise discriminate against any employee for making a complaint or giving evidence with respect to an alleged violation of a code provision (Ex. Order 6711; Model, 522). 1494.1

Notice of dismissal

While the practice of giving adequate notice before dismissal is undoubtedly desirable, NRA should not make a special effort to extend general regulations of hours and wages into this area of personnel policy. The industry may make such provision as it desires (Model, 551). 1494.2

Night work for women and children

The question whether women and children should be permitted to work at night is one for State regulation rather than for code regulation. Furthermore, in certain quarters there is a definite insistence that it is a form of sex discrimination not consistent with the attitude toward women in this day and age. 1495

Vacations

Regulation of the practice of giving vacations should not be encouraged. 1496

Retention of employment privileges

Code provisions stipulating generally that workers shall continue to enjoy any privileges which were theirs at some previous time are extremely difficult of enforcement both practically and legally, and should not be encouraged. 1497

Transportation, meals, etc.

Where it has been customary for employers to reimburse employees for certain expenses, and where employees are being or may be deprived fo such reimbursement, such mistreatment may properly be prohibited. Provision is made elsewhere (II-1391) protecting minimum wages from infringement by deductions. 1498

ATTESTED TRADE PRACTICES

Certain trade practices have become a commonplace of our legal and business structure. Such may be included in codes with little or no necessity of formal safeguards in the public interest being expressed. 1500

Misrepresentation

Of product or services

No member of industry may use misleading or inaccurate advertising or misrepresent any goods, credit terms, values, policies, services, or the nature or form of the business conducted (Model, 701). 1511

False marking or branding

No member of industry may mark or brand goods so as to mislead customers respecting such goods (Model, 703). 1512

False invoicing

No member of industry may knowingly withhold from or insert in a quotation or invoice any statement that makes it inaccurate (Model, 702). 1513

Defamation

No member of industry may falsely impute to a competitor dishonorable conduct, inability to perform contracts, questionable credit standing, or make other false representation concerning him or the quality of his goods (Model, 704). 1514

Appropriation of competitors' property

Misappropriation of trade marks

The use of any trade mark or trade name which has previously been adopted and used by a competitor is unfair and may be prohibited. 1521

Commercial espionage

Members of industry may be prohibited from procuring information respecting the business of any competitor, except with his consent, when such information is properly regarded as confidential or a trade secret. Such prohibition does not extend to information relating to a code violation. 1532

Interference with contracts

Members of industry may be prohibited from wilfully attempting to induce the breach of contracts between competitors and their customers by any false or deceptive means, and from interfering with the 1530

performance of such contracts with the effect of embarrassing competitors in their business (Model, 708). 1530

Infringement of territorial rights

The right to contract an exclusive sales territory, provided it does not tend toward monopoly, is well recognized at law. Any attempt by a competitor to sell goods covered by such a contract in the exclusive territory is unfair and may be prohibited if the goods are not of such character that the exclusive agency tends toward monopoly. 1531

Substitution of goods and services

No member of the industry may substitute goods other than ordered by his customer without notice to such customer and opportunity to refuse acceptance free of expense. 1540

Price fixing and coercion

No members of industry may enter into agreement with other members to fix prices or attempt to coerce any other members to change, fix, or maintain prices (Model, 714). 1550

Specious threats of litigation

Members of industry may be prohibited from publishing or circulating unjustified or unwarranted threats of legal proceedings which tend to harass competitors or intimidate their customers (Model, 705). 1551

Commercial bribery

No member of industry may give anything of value for the purpose of influencing or rewarding the action of an employee or agent in relation to his principal's business without the knowledge of such principal. This shall not be construed to prohibit advertising articles except as they may be used for commercial bribery. (Executive Order 6464; Model, 707) 1560

Secret rebates and other concessions

No member of industry may make or offer secret rebates or other concessions, in money or otherwise. Services and privileges should be extended equally to all customers of the same class (Model, 706). 1570

Trade practices not dealt with

There may be trade practices which have been held unfair by the courts or the Federal Trade Commission, but are not dealt with by the code. In order to avoid any inference that the code is intended to supersede such situations, it should be provided that the code has no effect to limit any such holding, provided that such holding is not inconsistent with the Act or the code. Of course, if the code denominates as unfair a practice which has previously been held to be fair, the code would govern. 1590

EXPERIMENTAL TRADE PRACTICES

Those trade practices which are still in the formative, or trial, or experimental stage, and which have not as yet been fully adjudicated, may be included in codes only in conjunction with appropriate procedures and expressly stated safeguards in the public interest. 1600

Factual basis

The inclusion of any such trade practice must rest upon a full, adequate finding of facts showing justification thereof by the particular industry concerned. This finding of facts must reach far beyond some "agreement" on the part of the industry members; far beyond "validation" by a formal public hearing. 1601

Previous custom

Of such provisions, one that is founded on a previous custom of the industry has greater claim to acceptance than one which proposes an innovation. 1602

Combinations of provisions

It is particularly important to examine not merely an individual trade practice but also any proposed combination of trade practices. Sometimes a trade practice that is unobjectionable if standing alone becomes objectionable when associated with certain other trade practices. 1603

Limitation on number of provisions

It is highly desirable that only a small number of such provisions be inserted in any one code at the outset. This is necessary in order to permit inquiry adequate to establish the findings of fact and careful supervision of operation in the public interest. In other words, the policy should be one of gradual introduction of such provisions in any particular industry so as properly to substantiate their worth. 1604

Reservation of right to stay

Any of this class of provisions must include a provision empowering NRA, after due notice, to stay the operation thereof in case it proves to be not in the public interest. 1605

Discriminatory provisions

It is difficult to discuss the subject of whether a particular provision is discriminatory without begging the question. Obviously, an unsound provision is very likely to be discriminatory, while a sound provision can hardly be. If the provision in question has not been accepted as wrong in principle, and if it interferes with the business practices of some of the members of the industry, 1606

the presumption of discrimination is strong. In such case the burden is on the proponents to demonstrate the absence of discrimination. 1606

Selling methods

The field of merchandising is one which should be invaded hesitantly, if at all, for the purpose of limiting individual practice and initiative. To justify any such limitation must require a clear showing that the particular practice complained of is unfair or injurious to the industry as a whole. 1610

Terms of payment

Upon adequate showing of abuses, or possibility of abuses, a reasonable limitation, consistent with the custom of the industry, may be placed upon terms of payment, cash discounts, and datings. The provision must be no more than a maximum, permitting the member of industry to establish his own terms on a stricter basis if he desires. The limitation of terms may not be permitted if it has any tendency to contribute to price fixing. 1611

Extended dating

The prohibition or limitation of extended dating of invoices must depend upon convincing evidence of tangible ill proceeding therefrom. 1612

Consignment selling

There is nothing inherently bad in consignment selling. It is sometimes susceptible of misuse, as where it is employed by large, well-financed concerns to take customers away from weaker competitors. Nevertheless, in such case there must be strong showing of injury to warrant its prohibition or limitation. In a few instances the practice may be found to have unduly burdened the cost of distribution. In addition to such factual showing in the latter case, there ought to be practical unanimity among members of the industry in order to warrant its prohibition or limitation. 1613

Contracts for future delivery

Limitations on the period for which members of industry may contract for future delivery are well outside the normal area of code regulation. Generally a provision requiring members of the industry to file their practices as to such contracts in accordance with the open price plan will meet any evil which gives rise to a demand for this type of regulation. Where it is reasonably clear that filing would be ineffectual, however, and upon adequate showing of need, there may be limitation upon the following conditions-- 1614

Period of limitation

The maximum contract period must be reasonable with respect to the nature of the industry's products, and its trade practices. It must not be more stringent than the customary practice in the industry over a preceding period of at least one year. 1614.1

Special types of contracts

Adequate consideration must be given to the necessity of providing for special types of contracts which may require exceptional treatment, such as contracts to furnish materials for a specific project, or cost-plus contracts. 1614.2

Compliance

Compliance must be reasonably anticipated to a degree which will avoid any substantial increase in the administrative and enforcement burden of NRA. 1614.3

Effect on other interests

It must be assured that the provision will not tend to render production and employment less stable or be unfair to purchasers. 1614.4

Form of sales contract

Uniform sales contracts are in the shadowland of policy. (No reference is here made to the content of such contracts; it is assumed to be proper; otherwise, obviously, the contract form is unacceptable.) As a means of enforcing desirable trade practices, and as a means of better informing the customer of his rights and obligations, much may be said for them. Yet they constitute the more meticulous, detailed species of regulation which for many reasons it is desirable to avoid. The industry desiring such uniformity should be made aware that NRA is averse to such detailed regulation, and should be required to make an adequate case for it, before the provision can be entertained. 1615

Trade-in allowances

In some industries the fictitious inflation of trade-in values, by deceiving competitors as to the prices at which sales are being made, and customers as to the values they receive for their money, constitute a definitely unfair trade practice. Any casual, unconsidered limitation of trade-in allowances would offend against the policies respecting price fixing. Where the evil is adequately disclosed, however, and failing any sounder remedy, a provision for limitation of such allowances may be entertained. 1620

Method of limitation

The limitation must in no case do more than determine a 1621

maximum, below which each member of industry is free to fix the amount of his own allowance. 1621

Basis of limitation

The existence of the evil of extravagant allowance is no reason for embracing the evil of the other extreme. The limitation must be reasonable, or it will impose an equal burden upon commerce. Nor may the allowance be based upon arbitrary or hypothetical figures of what the value should be. The only proper basis is a factual showing of the prices of actual sales of such second-hand products in the open market. Such prices may be given a moderate adjustment to allow for reconditioning and sales cost. 1622

Advertising allowances

Manufacturers or other vendors selling goods to distributors frequently desire to purchase from their customers an advertising or promotion service which such customers can render. In doing so it has been customary to make payment by "allowing" a certain reduction from what would otherwise be the price of the goods. The payments thus made have become known as "advertising allowances." Code provisions declaring such allowances to be unfair would not change the basic facts that sellers must price their goods to buyers and that certain buyers have promotion services which they desire to render and for which the sellers are willing to pay. 1630

The evils and their remedy

The remedy for such suspicion, secrecy, confusion, and misrepresentation as may be connected with advertising allowances lies in (Model, 741-744)-- 1631

(a) Clearly separating and thus establishing the distinct identities of the two activities which are involved.

(b) Causing that part of the advertising allowance which is actually a price reduction to appear in prices, and if the industry has an open price plan, to be reported.

(c) Causing that part of the advertising allowance which is actually a payment for service rendered to appear as such with a definite description of the service and with such publicity, where practicable, as will render less likely the payment of more than the competitive worth of the service.

No general prohibition

Advertising allowances may not be prohibited generally by restrictions on the basis of products or types of distributors. 1632

Rebates not to be disguised

The members of an industry may be prohibited from desig- 1633
nating as an advertising allowance, promotion allowance, or similar term, any price reduction, discount, bonus, rebate, or other form of price allowance or concession, or any consideration for advertising or promotion services offered or given by them to any customer.

Service must be definite

The offering or giving of any consideration for advertising 1634
or promotion services to any customer may be prohibited except where the service is definite and specific.

Separate contracts

Agreements for the purchase of advertising service from 1635
customers may be required to be in written contracts, separate from sales contracts, and such contracts may be required to set out the promotion services specifically and completely, together with the precise consideration to be paid therefor, the method of determining performance, and other proper terms of condition.

Publicity

Some arrangement for publicity may be made where effective 1636
machinery therefor can be devised. In considering any such arrangement, care should be taken to avoid machinery so cumbersome that its costs will outweigh benefits to be granted.

Premiums and "free deals"

There should be no general prohibition of the use of premiums 1640
or "free deals." Usually it is the misuse of these, rather than the use, which is objectionable, as where premiums are used to evade the proper purposes of an open price provision. The proper way to prevent such evasion is by careful drafting of the provision in question. For example, in an open price provision, it should be required that all terms and conditions of sale, including premiums, be filed. Although there should be no general prohibition, the use of premiums in the following ways may be prohibited:

Commercial bribery

The use of premiums or "free deals" in ways which in- 1641
volve commercial bribery in any form.

Lottery

The use of premiums or "free deals" in ways which involve 1642
lottery in any form. The term "lottery" should be construed to include, but without limitation, any plan or arrangement whereby the premium or "free deal" offered differs substantially in value from customer to customer of the same class, except as a result of differences in quantities purchased.

Misrepresentation, fraud, or deception

The use of premiums or "free deals" in ways which involve misrepresentation, or fraud, or deception in any form. The use of any of the words "free", "gift", "gratuity", or language of similar import in connection with the giving of premiums or "free deals" cannot be declared deceptive in and of itself. But such use may be prohibited if there is intent to deceive, or if it does in fact mislead or deceive customers in some material particular. 1643

Discrimination between customers

The giving to any customer of premiums or "free deals" which are not offered to all customers of the same class in the trade area. 1644

Production control

No general policy has been formulated respecting measures designed to control production. Experimental provisions have been permitted in a number of codes, employing different devices: machine hour limitation, production quotas, limitation of new capacity. None of these has demonstrated a right to permanence. 1650

Hours of operation

The limitation of hours of operation has already been considered in its aspect as a means of supporting enforcement of labor provisions (II-1293). As a means of controlling production, it is subject to what has been said above. 1651

National resource industries

The best case for production control can be made out for the natural resource industries. As to method, it must be observed that the system of quotas authorized in the lumber code was not a success. 1652

Factual showing required

Without commitment as to policy, it may be said that any application for production control must be accompanied by strong factual evidence of the necessity of the limitation. Such evidence should present a picture of the industry's productive capacity and the consumer's demand for the products of the industry, both for the industry as a whole and for the individual members comprising it. The data must reveal that the demand for the products of the industry is far below the productive capacity of the industry, and that over-production and its resulting evils have been a characteristic of the industry, with the resulting evils of destructive price competition, unfair competitive practices, and instability of employment. Any limitation must allow ample room for substantial increase in demand for every member of the industry. 1653

Standards of product

Standardization of product is not to be accepted as a universal prescription, nor is it usually a zone of action into which NRA should project itself. In many cases, the prohibition of false marking or branding (II-1512) is a sufficient protection. Where the industry discloses a strong sentiment for it, however, or where a strong showing is made in the public interest, NRA will lend its cooperation in the manner and upon the conditions following (Model, 761-767): 1660

Standards committee

The code committee will establish a permanent standards committee, upon which government and consumer interests will be represented. 1661

Formulation of standards

This committee will study and formulate standards in co-operation with the American Standards Association or the U. S. Bureau of Standards. The code committee will submit such standards either to the Association or the Bureau for approval. If the standards committee disagrees, the code committee, with the approval of NRA, may determine the standards to be submitted. After such review as NRA may consider necessary the standards will be binding on members of industry. 1662

Revision of standards

The standards committee will observe the operation of compliance with such standards, and will recommend revisions whenever necessity appears. Such revisions will follow the same procedure. 1663

Non-standard products not prohibited

The establishment of standards will not prohibit the manufacture and sale of non-standard products which are accurately labeled or otherwise clearly identified to customers, if such non-standard products are in no way harmful to the users. 1664

Design piracy

Each man should have the right, in the absence of contrary considerations of public policy, to the exclusive use for a reasonable period of the product of his mind. There can be, therefore, no fundamental objection to the prohibition of design piracy. The difficulty of administration, however, is an objection seriously to be considered. No industry in which design piracy is not a serious problem should attempt to deal with the matter (Model, 771-779). 1670

Registration of designs

Coupled with any prohibition of design piracy should be a 1671

provision for registration of designs; otherwise the administrative problem is too difficult. Such registration should be with an impartial agency. It should not, of course, be mandatory; and should be merely a condition of protection against piracy. The filing bureau should be required to give all the factual assistance required by NRA to make determinations in particular cases. 1671

Relation to existing laws

Where design protection is offered by existing statutes, the period permitted therein should be accepted as the appropriate maximum. No code may afford protection for a longer period. Nor should the code provision be in contravention of any such statute in any respect; it should express its intention to be consistent therewith. 1672

Guaranty of product

The guaranty by a reputable manufacturer of the quality of his product is at once one of the solidest of sales devices and a grateful protection to the consumer. NRA should be very chary of accepting provisions which unduly limit the right to give guaranties. 1680

Limitation to defects of material or workmanship

The above is not to say, of course, that guaranties may not be abused. They are sometimes; and where such abuse can be shown, a proper limitation may be imposed. But no manufacturer should be prohibited from guaranteeing his material and workmanship. 1681

Limitation of period of guaranty

The length of the period of guaranty can never be presumptive of extravagance of guaranty. Unreasonable length of guaranties do afford a means of giving cloaked concessions, but there must be definite evidence that this is so in any particular case. The fact that one manufacturer gives a longer guaranty than his competitors is not prima facie unreasonable: he may be able to demonstrate that his guaranty is entirely appropriate to the quality of his product. 1682

Adjustments by dealers

Manufacturers may not be required to prohibit their dealers from making adjustments pursuant to their guaranties. With full appreciation of the problem posed by the retailer who is irresponsible in the matter of replacements, nevertheless that problem does not justify placing an unnatural bar between the customer and the retailer with whom he deals. 1683

Sundry questions

Classification of customers

No code may properly classify customers if the effect is 1691

to fix prices, discounts, or differentials, or to establish resale price maintenance, or eliminate, suppress, or discriminate against any customer or class of customers. For proper purposes there can be no objection to a classification of customers, but no one may by coercion attempt to cause the inclusion of a customer in, or his exclusion from, any class. Each member of industry must be permitted to classify his own customers in accordance with his own judgment (Model, 626, 627). 1691

Restrictions as to customers

The restriction of sales by manufacturers to dealers of certain qualifications, such as those who maintain a place of business and warehouse, would be a species of class legislation which could not be approved. It is not the function of codes to limit the judgment of members of industry as to the persons to whom they should sell. 1692

Return of goods for credit

It must be admitted that in many industries, particularly in times of stress, laxness in the acceptance of the return of goods for credit tends to become an obstruction to commerce, harassing to the manufacturer and ultimately costly to the consumer. Where such conditions appear, a reasonable limitation upon such return may be considered. Any such provision must be entirely fair to purchasers. Returns may be limited to causes due to the fault of the seller, as defects or errors; or, if returns are allowed for causes not the fault of the seller, the purchaser may be required to pay the return freight. The period allowed for examination of goods by the purchaser must be reasonable, and there should be no limitation on return on account of defects not easily discoverable. 1693

Conformance of bid to stipulated price

To require that bids adhere to the stipulated appropriation for a project exceeds all proper limitation on bidding practices. It would be unjust to prevent a bidder availing himself of his skill or lower costs to place a bid at less than the stipulated appropriation. 1694

PRICES

General price policy-Introduction

The competitive system

In the area of free enterprise, price is supposed to be determined in an open market, where it is assumed to emerge from the operation of all the competitive forces which are included in the shorthand words, supply and demand. This competitive system is often spoken of as an automatic self-regulating mechanism, but, as a matter of fact, it is not now and never was. Government intervenes to secure the maintenance or restoration of competitive conditions where, for example, an understanding among interested business men may prevent the establishment of a competitive price. Government also undertakes to regulate the plane of competition in the field of wages and working conditions. It regulates that plane further in the field of trade practices. 1701

Purpose of price policy

A price policy should, of necessity, be stated in general terms. Its end is to cause price to perform its essential functions; to insure that it be a competitive price in an open market, free from the influences of ignorance, malice, deception, or collusion. 1702

Factors to be considered

The establishment of a plane of competition involves a consideration of all the arrangements, usages, and customs under which prices are made. Such mechanisms as a free market, open price filing, quantity discounts, cost accountancy, and the like are neither good nor bad in themselves; the merit or demerit of each comes from the use to which it is actually put. Nor can any device or procedure be judged alone, for it always appears in combination with other devices. 1703

Differences in industries

Industries are far from being enough alike to permit identical treatment. They differ in structure, organization, and usages. They are currently at very different stages of development. They are susceptible to diffent types of supervision. 1704

Objectives and means

It follows that a statement of policy can present no more than an approach of this problem. The objectives, of course, are definite. The goal sought is the establishment of conditions under which, in a free and open market, competition may determine a fair price. The means must be flexible, requiring the use of a miscellany of devices and procedures. 1705

Open price filing

Open price filing is a mere device. Its potentialities for benefit or mischief depend upon the purpose to which it is put and the methods which attend its use. The standard by which it should be judged is price making similar to that afforded by an open and competitive market, such as an organized commodity exchange. 1710

Objectives of price filing

The ideal of an open and competitive market can seldom be fully attained. It is hoped to approximate its objectives by open price filing under appropriate circumstances. It is possible for the open file to allow buyers and sellers to accommodate their activities to competitive conditions, to fix limits to the spread of quotations at any given time, and to tend to make price perform its industrial function. Open price filing should, so far as possible, be made to furnish a public record of price movements, provide a check on discrimination among customers, give the small enterpriser information about the activities of his larger competitors, reduce the amount of deception among buyers and sellers, give the parties concerned a fuller knowledge of conditions affecting the market, and promote and safeguard the integrity of the process of competitive price making. 1711

Essential characteristics

The following are the essential characteristics of an open price provision (Model, 711-714): 1712

The filing agency

An impartial and confidential body (II-1198) should be the administrative agency in order that price lists may be distributed to members of the industry and to their customers without partiality and without efforts to influence the quotations. If the body is a private agency, its activities must be subject to the immediate oversight of the Government. 1712.1

Publicity

The prices must be genuinely available to all customers and members of the industry, together with the name of the seller whenever it is necessary to an identification of the quality of the product. 1712.2

Definite prices

The filed prices must be those at which sales are actually to take place, rather than merely minima above which members of an industry may secretly vary their prices as they choose, or maxima from which discounts are to be allowed. 1712.3

Identification of product

The various qualities, styles, and sizes of the product must be capable of accurate identification. 1712.4

Complete filing

Since any one of the terms of sale may be employed to vary the actual sales price, all such terms--quality, quantity, style, size, discounts, point of shipment, classes of customers, manner of payment, and so forth--must be filed in precise and definite terms. 1712.5

The field for use of open pricing

Unfavorable fields

Open price systems should not be indiscriminately applied to the entire range of American industry. This device may require much effort and give little usable information where-- 1721

(1) Commodities differ so widely in quality, character, and accompanying service that prices are likely to vary with each sale.

(2) Where the number of concerns and products is very large.

(3) Where, through custom or convenience, prices remain stable and market changes lie mostly in the character of the goods sold.

(4) Where commodities are highly perishable and their supply fluctuates rapidly.

(5) Where the nature of the product makes identification of quality, style, or size difficult.

Favorable fields

On the other hand, the feasibility of an open price system increases in so far as price competition is active, the products of the industry can be clearly identified, and price changes are frequent without being incessant. 1722

Factors to be considered

Consideration should be given to the following factors: 1723

(1) Frequency and extent of price change.

(2) Complexity of terms of sale.

(3) Ease of identifying the product.

(4) Number and geographical diffusion of members of the industry.

(5) Degree of price competition 1723

(6) Economic importance of the product.

(7) In some instances, as where the finished product of one industry is the raw material of another, the conditions in correlative industries.

Where open price systems should be avoided

In certain industries, open price systems involve such probabilities of serious abuse that, even though they are feasible, they should be avoided. These are industries in which the need is to preserve competition against attack, rather than to foster it. Such is an industry in which the dominance of an enterprise or group is intimidating to smaller independents, or one in which the chief obstacle to collusion is the difficulty of devising machinery for price understandings. The field for open pricing is that in which competition tends to be active, but ill-informed and chaotic; not that in which competition tends to evolve into monopolistic restraint. 1724

Waiting period

A waiting period is likely to freeze a competitive process which should be kept active. In an open market there is no counterpart of such a device. When prices are rising, a flood of orders during a waiting period may unsettle a future market. When prices are too high, the incentive to reduce them may be lessened by knowledge that competitors may destroy most of the sales advantage before reductions can become effective. Therefore, the general presumption must be against the use of the waiting period, and the burden of proof is upon the industry which wishes to employ it. 1730

Best case for waiting period

Probably the best case for a waiting period can be made for industries in which sales are of large size and small number, members are many and widely scattered, and information about prices cannot, for some reason, be quickly circulated. 1731

Limit on frequency of price change

In industries where prices immediately effective are manipulated for the purpose of allowing large discriminatory discounts to privileged customers, it may be necessary to impose some limit upon the frequency of price change. In such rare cases this can be done by requiring that a price, once effective, must remain so for some reasonable minimum period. A waiting period before the price becomes effective is not necessary in dealing with this problem. 1732

Sundry price filing provisions

When prices become effective

In the absence of a waiting period, prices become effective immediately upon receipt by the agency, and the code should so state. No member filing a revised price may file a higher price within 48 hours. 1741

Price basis

No open price plan may require members of industry to file prices on any specific basis. They must be free to file f.o.b. factory or delivered prices, list or net prices, as they elect. 1742

Adopting another's price list

To avoid unnecessary expense or trouble for small enterprises, members of industry may be permitted, if they desire, to adopt the price list of another instead of filing a separate one. 1743

Lump-sum prices

Any general prohibition of lump-sum prices is an unwarranted regulation of individual sales practice. To prevent evasion of price filing provisions, however, members of an industry may be required to quote or invoice separately any articles for which prices have not been required to be filed. 1744

Preservation of records

The agency will maintain a permanent file of all price terms and will not destroy any part of such records except upon written consent of NRA. 1745

Price statistics as an alternative

A price statistics system is one which provides for the open reporting of price summaries, price ranges, and sales volumes based upon records of past transactions. Such a system involves neither the same technical problems, nor, if the identities of sellers are concealed in the summaries, as great danger of abuse as necessarily appear with current price filing. The contrivance of this form requires a nice balance between the safeguards of secrecy and the necessity of information. But there are many industries which will be adequately served thereby and in which, accordingly, open price filing is unnecessary. 1750

Destructive price cutting

Wilfully destructive price cutting is an unfair method of competition. It imperils small enterprise, tends toward monopoly, and impairs code wages and proper working conditions. Because of the 1760

difficulty of defining it, no prohibition in a code can be self-executing, but the facilities of NRA can be employed to determine the existence of destructive price cutting in particular cases (Model, 720-725). 1760

Complaints

Any member of the industry, or of any other industry, or the customers of either, may, at any time, complain to the code authority of the existence of destructive price cutting. The code authority will, within five days, afford an opportunity to the person complained of to answer such complaint and will formulate a conclusion within fourteen days. If either party dissents from such conclusion, all data will be referred to NRA for investigation by it. 1761

Declaration of emergency

Whenever the NRA, after investigation, shall find (1) that an emergency has arisen within an industry adversely affecting small enterprises or wages or labor conditions, or tending toward monopoly or acute conditions which tend to defeat the purposes of the Act, and (2) that the determination of a minimum price for a specified product within the industry is necessary to mitigate the conditions constituting such emergency, and to effect the purposes of the Act, the code authority is authorized to cause an impartial agency to investigate costs and to recommend such minimum price to NRA. 1762

Establishment of minimum price

If NRA agrees to the price so recommended, it will establish such minimum price for a stated period. Thereafter, during such period, no member of industry may sell the specified product at a net realized price below such minimum. NRA, either upon review by the code authority or by itself, may revise such action at any time. 1763

The loss leader

The loss leader is a device, not of the technology of merchandising, but of the business struggle for customers. The rivalry between retailers should be based upon practices which promote economy in merchandising, not upon sheer financial strength or predatory tactics. 1770

Difficulty of solution

Yet it is not easy to find a solution for the problem. A system of accounting cannot be made to reveal the cost of handling specific articles; even if it could, retail merchandising cannot be subjected to the principle that each article must bear its own cost. 1771

Tentative provision

The limits of the prohibition of loss leaders must be determined in a way that will allow the utmost leeway to the individual enterpriser in allocating the cost of doing business among the dozens or hundreds of articles which he offers for sale. The present provision in many codes which forbids the sale of an article at less than the invoice cost plus a small addition to cover a part of the labor expense incurred in the sale, is a compromise. Experience with this provision is not conclusive; it should continue under observation. Meanwhile, lacking a real answer to the problem, it may be accepted tentatively. Its use should always be safeguarded by a provision that the clause may be deleted if found not to be working in the public interest, without such deletion serving to invalidate the rest of the code. 1772

Cost systems

Accounting is invaluable for presenting the state of a business and supplying information essential to its successful operation. But it is a device, not a science. Its results are at best approximations. It requires accuracy and fidelity, but it cannot exclude the arbitrary. 1780

Cost-formula-for-price

A costing system and a cost-formula-for-price are quite different things. A costing system is a guide to the individual enterprise in meeting its business competition. A cost-formula-for-price attempts to determine the cash-terms in the bargain of sale. 1781

As controlling prices

The great majority of cost provisions employed to delimit prices are unwise and unenforceable. In most cases the difficulty is not basically a problem of cost or even of price, but of industrial maladjustment. It rests upon a disparity between the capacity of the industry to produce and of the market to absorb. 1782

Relationship between cost and prices

Analysis shows little justification for attempting to secure a simple and continuing relation between the cost and prices. A pegging of prices on the basis of cost can neither establish economic justice nor restore industrial prosperity. For these reasons (set forth in detail in Adm. Policy, New Series No. III) the use of a cost formula to limit price may be allowed only in the case of loss leaders, natural resource industries, and emergencies. In other instances the necessity for its use and its practicality must be established beyond reasonable doubt. 1783

Mandatory cost systems

A mandatory cost system for other than price-making purposes may be approved if its necessity and practicability are 1784

established beyond reasonable doubt. Generally, it can be approved only for an industry in which a general uniformity of conditions can be approximated. In instances where a whole industry desires a uniform system, where processes and products are identical, and where there are no serious obstacles to its operation, mandatory costing will be given an opportunity to make out its case. In industries such as coal and textiles, where unusual privileges have been given or unusual forms of control established, cost records may be a necessary adjunct in order to furnish information for public control. In any event it must be recognized that elaborate systems of costing are expensive; they are a burden which small enterprises cannot afford. 1784

Voluntary cost systems

One of the dominant objectives of NRA is the creation of conditions of fair competition. The lack of accurate knowledge by business men of the elements on which their costs and prices depend is a factor which works against the orderly operation of the industrial system. The formation, improvement, and extension of sound systems of costing need encouragement. Voluntary systems are a matter for control of the parties but NRA is willing to cooperate in their establishment whenever called upon (Model, 731). 1785

Estimating bureaus

No provision which binds members of the industry to use in any part the cost figures prepared by an estimating bureau can fail to have the effect of limiting prices. It is therefore subject to all the observations herein made respecting price limitation (II-1701). There can, of course, be no substantial objection to an estimating bureau which members of industry may use at their election, though this is open to the serious question whether the industry is financially able to support it. Now should the expense be assumed in the absence of substantial unanimity in the industry. 1786

Sundry matters

Resale price maintenance

No form of price control by the producer or vendor over products of which he no longer holds title is acceptable. 1791

Basing point systems

No mandatory basing point or zoning system for prices may be permitted. But there may be no objection to such a system which permits manufacturers to sell on an f.o.b. plant basis if they elect, provided there is a satisfactory showing that the system cannot tend toward monopoly. Thus, a system in the lime industry, whereby producers were to sell at f.o.b. plant prices in their own zone and in any other zone for which they elect to file prices, was found acceptable. 1792

Price differentials

Any proposal to limit or control price differentials, whether between different classes of customers or between different styles or sizes of product, or the prices of extras, is subject to all the observations which have been made respecting price limitation. 1793

Price of repair work

Any proposal to limit the price at which a member of industry may furnish repair work on products which he has sold is subject to the general observations on prices. It may also further be objected that such a provision would be difficult of enforcement. 1794

Guaranties against price decline

Beyond requiring the filing of practices pursuant to a price filing system, individual judgment should not ordinarily be shackled by prohibiting guaranties against price decline. Exception may be warranted, however, in an industry where the practice of refraining from guaranteeing against price decline is well established, where it has aroused little or no opposition among customers, and where the business is largely spot. 1795

CODE ADMINISTRATION

Few of the provisions of codes are self-executing. In one or both of two aspects nearly all provisions require continuing administration. One of these aspects is concerned with securing compliance with codes by the individual members of industry. The other aspect is concerned with the general effect of code provisions. 1800

Responsibility for administration

Responsibility for the administration of codes belongs primarily to NRA and secondarily to the enforcement agencies of the Government. That responsibility cannot be relinquished to industry or industrial agencies. 1801

General effect of codes

The general effect of codes must be a subject of continuing interest. Obviously not all of the problems of an industry can be solved in the first formulation of its code. Equally obviously, not all the proposed solutions will be found desirable. The field is too new and too vast to expect immediate perfection. All that can be reasonably asked is a continuing improvement. To encourage this is the responsibility of the Code Administration division. The policies governing this responsibility are contained in this section and in the section dealing with Amendments; the methods of carrying out the responsibility are elsewhere in this Manual. 1802

Compliance

Compliance is the responsibility of the Compliance and Litigation divisions of NRA and the enforcement agencies of the Government. The policies governing this responsibility are set forth in another section of this Manual. 1803

Industry's share in administration

Though full responsibility for the administration of codes remains with the Government, it is wholly proper and desirable for industry to encourage and assist in compliance with the codes, to observe their general operation and effect, and to continue to plan their improvement. This section of the Manual is devoted to the manner of this participation in administration. 1804

Organization of industry

Since generally it is impracticable for an industry to act as a whole, it is customary and desirable for it to delegate to some agency the power to act for it. Such an agency may be termed a code authority, or a code committee, or some name apt to the particular industry: the name is not important. The use of the word "authority" is not to be construed as vesting 1810

the agency with any of the government's authority. Such authority as it has is limited to the delegation by the industry of the right to represent the industry and to act on its behalf. Since the term "code authority" has been generally used to denominate the agency which represents the industry, that term will be used here. 1810

Size of code authority

The code authority should be large enough to permit representation of all classes of members of Industry (II-1812.2)--generally not less than 5--but not so large as to be unwieldy. 1811

Qualifications of code authority

If power is to be delegated to the code authority to act on behalf of the industry (and otherwise there is no reason for its existence), it must be truly representative of the industry. It is the duty of NRA to insure that the code makes proper provision therefor. 1812

Members of industry

Generally speaking, the members of the code authority should be members of the industry. It is not often that the interests of representation are better served by persons from without the ranks of those represented. 1812.1

Representation of all classes

Where the industry comprises different classes of members, provisions must be made for proportionate representation of each. Thus, where the members of industry vary greatly in the size of their business, both the large and the small members must be assured of representation. Thus also, where some members of industry employ a means of distribution different from others, there must be representation of both classes. Where a different character of product is made by different classes, both must be represented. The proportion of representation may be based on the same considerations which determine voting power (II-1825). The determination of such representation requires the application of judgment to all the facts in the particular case. 1812.2

Trade association as a code authority

It is entirely proper, and in some cases desirable, to constitute a trade association (or its governing body) as the code authority, provided that such association fulfills the requirements of the Act (II-1022, 1023). But, since it must be representative, it may act alone only where the industry is well-knit and generally participates in the trade association. Where there is a substantial minority of the industry which does not participate in the association, provision must be made for additional members on the code authority to represent such minority. 1812.3

Any trade association participating either directly or indirectly in code authority activities must fulfill the requirements of the Act (Model, 603). 1812.3

Modification of code authority

In order to insure that the code authority remain truly representative at all times, codes will provide that if NRA shall find, after hearing, that any code authority is not truly representative, or otherwise fails to comply with the Act, appropriate modification may be required (Model, 604). 1813

Selection of Code authority

The code will provide a means whereby the industry may select the members of the code authority. This method must be sufficiently specific to protect the rights of individual members of industry, but should not be so detailed as to stultify the industry when unforeseen circumstances arise. Considerable latitude in the method may be permitted if coupled with the provision that the method shall be satisfactory to NRA. 1820

Time of selection

Subsequent to the approval of the method of election and prior to the date of election, a sufficient interval should elapse so that all non-members of the association or non-participants in sponsoring the code may have a reasonable time to be informed of and comply with the prescribed method of election. 1821

Selection by NRA

While highly desirable that members of the code authority be chosen by the industry, there may be cases where such choice is impracticable. Where this is properly substantiated, or where certain classes of members have failed to elect their representatives within a specified or reasonable time, such selection may be by NRA. Nevertheless, endeavor should be made to secure selection by the industry as soon as conditions permit. 1822

Term of members

The code should provide for the term of office of members of the code authority and the date upon which in subsequent years the election is to be made. 1823

Notice to industry

Whatever the provision of the code, it is obvious that all members of industry must be given proper notice of the time and method of the election. What is proper notice must depend, of course, on the situation in the industry: the number of members of the industry, their geographical distribution, and the completeness of the information available 1824

respecting their identity and domicile. Opportunity must be given to all to vote and to perform any conditions precedent thereto. The association or committee applying for the code must use reasonable diligence to locate all members. If payment of assessment is a condition precedent, all members must be given a reasonable notice and opportunity to pay. 1824

Voting

The basis of voting is best chosen in the light of the situation in the particular industry, with a single guiding qualification: it must be fair to all. Where the volumes of business of the members of an industry are more or less of equal amount, it is proper to allow each member a single vote. This would hardly be fair, however, in an industry which includes some large and many small members. In such case, voting would be fair neither on a numerical basis nor a volume basis alone; some combination of these factors is desirable. Where it would be proper to apportion votes in part on the basis of volume, the number of employees may be used alternatively. Voting power usually has no relationship to the amount of assessment. Where the disparity between members of industry is marked, it is best cared for by separate representation of different classes. 1825

Qualification for voting

In order to be eligible for participation in the selection of the code authority, members of industry may be required to be in compliance with the code. They must be contributing their proper share of the expenses of administration (Executive Order 6678). Since assent to the code is unnecessary in determining a member's rights and obligations, such assent may not be made a condition precedent to the right to vote. 1825.1

Vacancies

A vacancy in the membership of the code authority should be filled in such manner as to maintain its representative character as provided in the code, and the manner of filling it should be specified in the code. 1826

Recognition by NRA

It is customary for NRA to "recognize" the code authority after its recognition. In this action, NRA exercises no discretion. It simply verifies the fact of election in accordance with the provisions of the code. Recognition constitutes a notice to the industry that NRA is satisfied of the propriety of the selection and is prepared to deal with the code authority as the representative of the industry. 1827

Non-industry members

Administration members

To represent the public interest, provision will be made for not exceeding three members on each code authority to be appointed by NRA. Such Administration members have no vote in code authority proceedings (Model, 602). 1831

Employee representation

Employees are entitled to equal representation on all bodies which deal definitely with problems affecting labor and industry jointly. Code authorities are not such bodies. They speak only on behalf of industry and have no power to dispose of labor problems except as they may negotiate with employees. Employees are no more entitled to representation on code authorities than is industry entitled to representation on agencies which represent labor. Some industries have found it very helpful, nevertheless, to invite employees to participate in code authority activities. Where they desire to do so, there can be no objection. They have the right, of course, to define the terms of such participation. 1832

Organization of code authority

The organization of the code authority itself is largely a matter of internal detail which may safely be left to it rather than provided for in the code. The code should authorize the code authority, subject to the approval of NRA, to adopt by-laws defining such particulars (Model, 612). 1840

Scope of by-laws

The by-laws may properly provide for-- 1841

(1) Establishment of code authority headquarters.

(2) Procedural and ministerial details for election of members in conformity with the substantive provisions of the code.

(3) Meetings and notice thereof.

(4) Officers and employees.

(5) Quorums.

(6) Duties, powers, and responsibilities of code authority officers.

(7) Keeping of minutes and records of code authority.

(8) Method of amending by-laws.

Limitations on by-laws

Provisions directed at regulation of the conduct or procedure of members of industry, individually or collectively, are proper matter for code provision, and beyond the scope of by-laws. 1842

Incorporation

The code may provide for incorporation of the code authority. The terms of such incorporation must be examined and approved by NRA, however, in order to insure that it has no effect to extend or alter the provisions of the code. 1843

Functions of code authority

In general, the duties of the code authority must be those, and no more, which are expressed in the code. But it is usually provided that the code authority shall have the general duties of insuring the execution of the code provisions and compliance therewith (Model, 611) and of observing the operation of the code and making recommendations for its improvement (Model, 623), and, by the very fact of its creation, the code authority may be assumed to have been vested with those general duties. As to more specific duties, the following paragraphs indicate those which, in the discretion of the industry, may properly be assigned to it. 1850

Power to bind the industry

The power of the code authority to bind the industry depends upon the delegation made to it in the code. Unless there is an express delegation of power, no right to bind the industry can be inferred (Model, 623). 1851

Compliance

The code authority may assist in securing compliance by constituting complaints committees which will undertake to explain to members of industry their obligations under the code and to secure adjustment of complaints (Model, 628). Details of procedure are stated in another portion of this Manual. 1852

Information and reports

The code authority may be charged to obtain from members of the industry such information and reports as in the judgment of NRA are needed for the administration of the code (Model, 613). 1853

Inter-industry relationships

The code authority should make recommendations to NRA for the coordination of its code with other codes (Model, 616). It should also appoint committees to meet with committees from other industries to consider inter-industry problems (Model, 624). 1854

Special subjects of inquiry

The code authority may be given the duty of studying any particular subject which is of interest to the industry, or upon which the decision as to some particular code provision may turn. 1855

Delegation of authority by NRA

The exercise of authority under the Act is vested in the President and such Government agencies as he may designate or create. An industry or its code authority is not a Government agency. Authority to exercise independent discretion cannot be delegated to it. An industry or its code authority may be empowered, however, to carry out certain responsibilities created by the code, but the manner of such carrying out must be subject to prior approval by NRA. Where the duty is well defined by the code, and its execution permits a negligible latitude of discretion, such execution may be made subject simply to disapproval by NRA. 1856

Review by NRA

NRA should have power to review any action of the code authority, and, if it appear unfair or unjust or contrary to the public interest, to suspend it pending investigation and hearing (Model, 606). 1857

Appeal to NRA

Whether expressed in the code or not, any person affected by any action of a code authority has the right to appeal to NRA for redress. 1858

Liability of members of code authority

Members of a code authority should not be held to be partners, nor should one member be liable for the act of another. No member exercising due diligence in his duties should be liable for any act or omission except his own wilful malfeasance or nonfeasance (Model, 605). 1859

Agencies of the code authority

The code authority may employ such agencies as are proper and reasonably required for the performance of functions defined in the code. 1860

Trade associations

Code authorities may use trade associations or other like organizations for the performance of their duties, but this does not relieve them of their responsibility (Model, 615). 1861

Impartial or confidential agencies

Where industry members are required to file reports of such nature that disclosure would be competitively injurious, an impartial or confidential agency (II-1198) must be designated or established to receive such reports. 1862

Sub-authorities

Where administration of the code will be facilitated thereby, there may be provision for sub-authorities, either representing particular classes within the industry or geographical areas. Except that they are responsible to the code authority, all that is here said of code authorities is applicable to sub-authorities. 1863

Finances

Members of the industry may be required to contribute to the expense of administering the code upon the conditions enumerated below (Executive Order 6678; Model, 617, 621). 1870

Budget

Each code authority must submit to NRA an itemized budget of the expenditures proposed to be made. Such expenditures must be shown to be reasonable having in view the purposes of the code and the size of the industry. Expenditures are limited to the amounts of the budget as approved by NRA (Model, 619). The proper scope of budgets is discussed in detail in another section of this Manual. 1871

Assessments

The amount of the funds required, as determined by the budget, must be apportioned among the members of the industry on some basis which will be fair to all, and as approved by NRA (Model, 620). 1872

Insignia

The right to use official insignia belongs to every member of industry who is complying with the codes to which he is subject, and cannot be denied because of failure to assent. Members must contribute their proper share of the expenses of code administration in order to be entitled to make use of insignia (Executive Order 6678). No one may display or use insignia contrary to rules and regulations prescribed by NRA (Executive Order 6337). The use of insignia under any code may be denied for failure to comply with one code. 1880

Labels

Under proper supervision of NRA, industries to which it is appropriate may require their members to use a label upon their 1881

products evidencing the fact that such products were manufactured in conformance to code provisions. Where labels are used as a medium for the collection of funds to defray code expenses, they are subject to the requirements respecting budgets (II-1871). 1881

Withdrawal of insignia

The right to use insignia (including labels) may be withdrawn only by NRA. 1882

Sundry matters

Statistical information

Every code is approved upon condition that persons subject thereto furnish such statistical information to Federal and State agencies as NRA deems necessary for the purposes of the Act (Executive Order 6479). A similar provision is to be included in each code (Model, 613). 1891

Additional penalties

The Act prescribes certain penalties for the violation of code provisions. Had other penalties been desirable, Congress would doubtless have provided them. It is generally improper, therefore, to attempt in a code to attach additional penalties to a violation. Of course, this has no reference to the withholding of privileges during a period of continuing violation. 1892

Liquidated damage agreements

Some industries desire to establish contractual relationships under which each contracting member is obliged to pay a stated sum as liquidated damages to the industry for a violation of the code. Such a contract does not depend upon the code for its validity, but there can be no objection if the code authorizes it, provided the form is approved by NRA (Model, 751). Codes may do so on the following conditions: 1893

Assent to be voluntary

Assent to the contract will be separable from assent to the balance of the code and failure to assent must not deprive a member of the industry of any privilege extended under the code. 1893.1

Determination must be impartial

Jurisdiction for determining the existence of a violation giving rise to the contractual liability for liquidated damages should be given (1) to NRA or (2) to some impartial agency either nominated by the code authority or designated by assent of the parties with the approval of NRA. 1893.2

Amount of damages

The amount of liquidated damages should be correlated reasonably to the probable injury. 1893.3

Disposition of damages

Damages paid should be applied as follows: First, if the violation from which they arise was of a labor provision involving under-payments to employees, all damages must be distributed equitably among all employees directly affected by such violation. Second, if the violation was of a labor provision not involving under-payment to employees, or other than a labor provision, such damages must be used for the expenses of code administration, and the balance distributed equitably and periodically among members of the industry assenting to the contract. 1893.4

Rights of others

Causes of action in favor of individual members of the industry, employees, or others should not be affected by any provision of the contract. 1893.5

Records and reports

Members of the industry may bind themselves to keep accurate records of transactions whenever required by any provision of the code, and to furnish reports thereof. It may further be provided that, in case of doubt as to the accuracy of any such report, the records may be examined by an impartial agency (II-1198). The results of such examinations are to be kept confidential, except as may be necessary for the proper administration or enforcement of the code (Model, 614). 1894

MISCELLANEOUS MATTERS

Cooperative organizations

1910 No code can be construed to prevent sales to, or through, a bona fide cooperative organization, nor to prevent such a cooperative organization from receiving, or distributing to its members as patronage dividends, such discounts, commissions, rebates, or dividends as are allowed to other purchasers in wholesale quantities, either ordinarily or pursuant to any code (Ex. Orders 6355 and 6606-A).

Definition of cooperative organization

1911 In order to qualify for the above provision a cooperative organization must comply with the following conditions:

(a) Be duly organized under the laws of any state, territory, or the District of Columbia.

(b) Allow each member owning a fully paid share one vote and only one, except as otherwise provided by the law under which it is incorporated, provided that a central or regional association comprised of cooperative associations may base voting upon the volume of business done with each member association, or on the number of members in the member association.

(c) Operate on a cooperative basis for the mutual benefit of members, distributing all income on the basis of patronage at stated periods not oftener than semi-annually, after providing proper reserves and paying not more than 8% on stock or membership capital.

(d) Do at least half of its business in any fiscal year for the account of members.

(e) Afford information to all members and stockholders respecting compensation paid officers and employees, and pay no compensation except for services actually rendered.

(f) Distribute patronage dividends equally to all members and stockholders who comply with requirements in proportion to their purchases and sale and make no representation of any definite or specified dividend. Dividends due a non-member may be accumulated for the purpose of purchase of a share of stock.

(g) Allow to organizers no more than 3% of the capital raised.

(h) Be subject to no control by any non-cooperative organization or person to whom any profits or excessive compensation is paid, nor be required to buy commodities from any specified non-cooperative concern. 1911

(i) Comply with codes to which it is subject.

Any of the foregoing conditions which are in conflict with the law under which such association is organized are waived.

Prison labor

The President has invited each State to enter into a compact with him providing that the use of prison labor in the manufacture of products for commerce shall be governed in respect of hours of labor and machine operation, and child labor, by the provisions of the code applicable to such product; and, further, that such goods shall be sold at the fair current market price (Ex. Order, April 19, 1934). As to States which have adhered to this compact, there is no occasion for codes to contain restrictions upon prison-made goods. Except as to such States, in any industry where goods made by prison labor are shown to have damaging competitive effects, members may be forbidden to buy or sell such goods, or to do so at less than the fair market price of goods manufactured in private commerce. 1920

Sundry code provisions

Products sold in export

Exports may be excepted from any provision regarding prices or trade practices, though never from labor provisions (Model, 801). Export trade, if not specifically excepted, is included and bound by code provisions. 1951

Forest conservation

One of the policies of the Act is the conservation of natural resources. The major code affected thereby, that for Lumber and Timber Products, has made proper provision for rules of forest practice and the operation of forest areas on a sustained yield basis. It is essential to the effective operation of any conservation program that conservation measures be applicable to all forest operations irrespective of the ultimate use of the forest products. Accordingly, each code covering forest operations will include provision for conservation measures. 1952

Arbitration

The code may provide for facilities for arbitration, and the code authority may be authorized with the approval of the NRA to prescribe rules of procedure and rules to effect compliance with awards and determinations (Model, 625). 1953

Purchases from non-compliers

It is fair to prohibit members of industry from purchasing 1954
materials or supplies for use in their business from persons who fail
to comply with codes to which they are subject. In order not to
place too onerous a burden on the purchaser, however, he should be
entitled to rely upon the representations of the seller, whether
express or inferred from the display of the Blue Eagle.

Price increases

In recognition of the fact that recovery is dependent 1955
in material degree upon an increase of purchasing power more rapid than
than any increase of prices, the policy of limiting price increases
to actual increases in cost should be expressed in the code
(Model, 831).

Sundry limitations

Assent to code

Since assent or non-assent to a code has no effect upon 1981
the rights or obligations of a member of industry thereunder, there
should be no requirement of such assent.

Restrictions of imports

Section 3e of the Act provides a means for dealing with 1982
injury to any industry from the importation of competitive goods.
Code provisions, the purpose of which is directly or indirectly to
restrict or handicap importations, should therefore be avoided.
This does not mean that a provision is to be condemned merely be-
cause it may affect imports, whether or not such is its purpose.
Where the provision has a proper primary purpose, and the effect
on imports is only secondary, the importers should be given a
hearing and the question determined on the balance of good.

Price adjustments due to codes

Codes may not require adjustment in purchase contract 1983
prices on account of any difference in costs caused by such codes.
The matter is one properly for private contract.

AMENDMENTS

SUBSTANTIVE GUIDES

The term amendment as applied to codes means any addition, deletion, or other change of any language thereof. For the sake of uniformity, the words "modification," "supplement," "revision," "addition," or "adjustment" will not be used to describe amendments. 5100

Substantive guides in general

The substantive guides applicable to code-making (II-1000) are equally applicable to amendments, both as to the content thereof, and as to the precedent requirements and conditions. 5110

Applications by industry

An industry may apply for an amendment, either by virtue of the general provisions of the Act relative to applications for codes, or pursuant to express provision for amendment in its code. 5120

Amendment of provisions which are contrary to policy

To a code provision which diverges more than slightly from policy, and if such divergence is not justified by the peculiar conditions in the industry, amendments will not be accepted unless they bring the provision into conformity with policy. 5121

Requirement for amendment

Provisions contrary to policy

Every provision in an existing code which is contrary to policy presents the necessity for an administrative decision, whether it is to be permitted to continue or whether other action is to be taken. Such a provision may be permitted to continue where the deviation from policy is unimportant, or where facts in possession of NRA justify such deviation. 5131

Provisions found unworkable

Provisions which in practice are found to be unworkable, or to fail to achieve their expected result, present the necessity for an administrative decision whether to abandon or to modify. 5132

Initiation of action

Whenever administrative decision is reached to take action respecting an existing code provision, the industry will be offered an opportunity to negotiate with NRA or to be heard on the subject. If no new facts thereby appear to impair the soundness of the decision, the industry will be invited to propose appropriate amendment. 5133

Proposals by NRA

Where code provisions are contrary to policy, or have proved unworkable or ineffective, or where the code lacks some provision required by policy, proposal for amendment may be made by NRA. Proposal will be so made only in respect of matters of importance. 5140

Stays

Where a code provision, or a portion thereof, appears clearly to require deletion, and no amendment has been applied for, or the need for action is too urgent to permit of the orderly process of amendment, such provision, or portion thereof, may be stayed by NRA. If the need is only to mitigate the effect of the provision, it may be stayed subject to such conditions as will correct the situation. 5150

MODEL CODE PROVISIONS

ARTICLE I

PURPOSES

To effect the policies of Title I of the National Industrial Recovery Act, this Code is established as a Code of Fair Competition for the_____Trade/Industry, and its provisions shall be the standards of fair competition for such Trade/Industry and be binding upon every member thereof. 100

ARTICLE II

DEFINITIONS

1. The term "Trade/Industry" as used herein includes the _____(State accurately what is included in the Trade/-industry, whether manufacturing, building, transporting, repairing, selling, and/or distributing at wholesale or retail, etc.) of _____(products, merchandise, or service, etc.) and such related branches or subdivisions as may from time to time be included under the provisions of this Code. 201

Suggestive: The industry includes manufacture for sale by anyone under his own trade name of the products of the industry as above defined, whether he is engaged exclusively in the manufacture of such code products or is engaged also in some other industry; and whether so engaged as an employer or on his own behalf; and whether he actually makes code products in his own plant, or has them made for him to his own specifications, formulae, or patents; and whether he actually makes in his own plant all types and sizes of code products which he markets, or has certain types and/or sizes made for him to his own specifications, or formulae, or patents. 202

2. The term "member of the industry" is any legal person engaged in the industry other than an employee. 203

3. The term "employee" as used herein does not include a member of the industry but includes any and all persons in the trade/industry, however compensated, subject to the direction and control of an employer. 211

4. The term "employer" as used herein includes any person in the trade/industry by whom as employee is compensated or employed. 212

5. The term "apprentice" as used herein shall mean a person of at least sixteen years of age who has entered into a written contract with an employer or an association of employers which provides for at least two thousand hours of reasonably continuous employment for such person and his participation in an approved program of training as herein above provided. 213

6. The term "Association" as used herein shall mean the _____Association. 221

7. The terms "President," "Act" and "Board" as used herein mean respectively the President of the United States, Title I of the National Industrial Recovery Act, and the National Industrial Recovery Board. 222

8. Population for the purposes of this Code shall be determined by reference to the latest Federal Census. (Insert only when needed). 223

9. The term "homework" as used herein shall mean industrial work done in the home for wages paid by an outside employer. 231

10. The term "home or living quarters" as used herein means the private house, private apartment, or private room, whichever is the most extensive, occupied as a home by the employee and/or his family. 232

11. A learner as used in this Code is an employee who has actually worked less than 240 hours (consecutive or non-consecutive) at the occupation in which he is engaged. 241

ARTICLE III

HOURS

Maximum hours

Section 1. No employee shall be permitted to work in excess of 40 hours in any one week or 8 hours in any 24-hour period (beginning at midnight), except as herein otherwise provided. 301

(Maximum hours for special classes of employees, if any should be inserted under the appropriate paragraph, together with the hours applicable.)

Hours for clerical and office employees

Section 2. No person employed in clerical or office work shall be permitted to work in excess of 40 hours in any one week or 8 hours in any 24-hour period. 302

Exceptions as to hours

Section 3. The provisions of this Article shall not apply to traveling salesmen, nor to employees engaged in emergency maintenance or emergency repair work, nor to persons employed in a managerial or executive capacity who earn regularly $35 per week or more; provided, however, that employees engaged in emergency maintenance and emergency repair work shall be paid at one and one-half times their normal hourly rate for all hours worked in excess of 40 hours per week and 8 hours per day. 303

Standard week

Section 4. No employee shall be permitted to work more than 6 consecutive days. 304

Employment by several employers

Section 5. Each employer shall require as a condition of continued employment, that each of his employees shall not work for any employer subject to a code so that the total of his working time exceeds the longest maximum hour provisions of any code governing his work. 305

ARTICLE IV

WAGES

Minimum wages

Section 1. No employer shall pay any employee in any pay period less than at the rate of 40 cents per hour, except as otherwise herein provided. 401

Office and clerical employees

Section 2. No employer shall pay any clerical or office employee in any pay period less than at the rate of $15 per week. 402

Watchmen and guards

Section 3. No employer shall pay any watchman or guard in any pay period less than at the rate of $15 per week. 403

Office boys and girls

Section 4. No employer shall pay any office boy or girl less than 80% of the rate specified in section 2 of this Article. The number of such employees shall not exceed 5% of the total number of office employees, provided however, that every employer shall be allowed at least one office boy or girl. 404

Piecework compensation - Minimum wages

Section 5. The minimum rate of compensation shall apply irrespective of whether an employee is actually compensated on a time rate, piece rate, hours, commission, or other basis. In determining the application of this clause compensation shall be computed on the basis of not more than a 7-day period. Where overtime is utilized such compensation shall be increased in the same ratio as in overtime hourly rates. 405

Wages above minimum

Section 6. No employer shall make any reduction in the full time weekly earnings of any employee whose normal full time weekly 406

hours are reduced by 25%, or less, below those existing for the four weeks ending June 17, 1933. When the normal full time weekly hours of an employee are reduced by more than said percentage, the full time weekly wage of such employee shall not be reduced by more than one-half of the percentage of hour reduction above said percentage. In no event shall hourly rates of pay be reduced, irrespective of whether compensation is actually paid on an hourly, weekly or other basis, nor shall any wages be at less than the minimum rates herein provided. 406

Within thirty days of the effective date hereof, (unless such adjustment has been heretofore made) each employer shall adjust the schedules of wages of his employees in such an equitable manner as will conform to the provisions hereinabove set forth, and still preserve wage differentials reasonably proportionate to those in effect prior to the effective date of this code.

Female employees

Section 7. Female employees performing substantially the same work as male employees shall receive the same rate of pay as male employees, and, where they displace men at substantially the same work, they shall be paid the same rate of pay as the men they displace. 407

Handicapped persons

Section 8. A person whose earning capacity is limited because of age, physical or mental handicap, or other infirmity, may be employed on light work at a wage below the minimum established by this Code, if the employer obtains from the State authority, designated by the United States Department of Labor, a certificate authorizing his employment at such wages and for such hours as shall be stated in the certificate. Each employer shall file monthly with the Code Authority a list of all such persons employed by him, showing the wages paid to, and the maximum hours of work for such employee. 408

Apprentices

Section 9. A person may be employed as an apprentice by any member of the industry at a wage lower than the minimum wage, or for any time in excess of the maximum hours of labor, established in this Code, if such member shall have first obtained from an agency, designated or established by the Secretary of Labor, a certificate permitting such person to be employed in conformity with a training program approved by such agency, until and unless such certificate is revoked. 409

Learners

Section 10-A. Notwithstanding the provisions of Article IV, section 1, learners, as hereinafter defined, to a number hereinafter permitted, may be employed at not less than 80% of the minimum wage specified in Article IV, section 1, or, if compensated on a piecework rate, at not less than the employer's standard piece rate for the occupation in which the learner is engaged. 410

Each employer may employ one learner for each 20 per cent of the total number of employees, and in any case each employer may employ at least one learner. 410

Section 10-B. Upon the termination of a learner's employment, the employer shall sign and give him a card bearing the learner's name, stating the occupation in which he has been employed as learner for that employer, and the number of hours so employed. 411

Section 10-C. When a learner has completed 240 hours actually worked in an occupation, in the employ of one or more employers, his employer shall sign and give him a card bearing the learner's name, the occupation in which he has been so employed, and stating that he is no longer a learner in such occupation. 412

Section 10-D. No employer shall employ a learner at less than the minimum wage specified in this section and no employer shall employ a greater number of learners than is authorized by this section at less than the minimum wage prescribed by Article IV, section 1. 413

Payment of wages

Section 11. Payment of all wages due shall be made in lawful currency, or by negotiable check or draft therefor, payable on demand at par, provided that reasonable facilities are available for cashing such check. 421

Time of payment and deductions. Except as otherwise provided, wages and salaries shall become due and payable at least semi-monthly, with not to exceed five calendar days holdover. Wages and salaries shall be exempt from all deductions, charges, or fines, except such as are voluntarily consented to by the employee or authorized by law. Employers or their agents shall not directly or indirectly accept rebates on such wages or salaries. 422

Working time

Section 12. An employer shall not pay an employee less than the regular rate of pay (including the overtime rate when applicable) for any time required to be spent at the place of employment or in connection with the discharge of duties of such employment, and such time shall be recognized as part of the permitted maximum hours. 431

ARTICLE V

GENERAL LABOR PROVISIONS

Child labor

Section 1. No person under sixteen years of age shall be employed in the industry. No person under eighteen years of age shall be employed in operations or occupations which are hazardous in nature or dangerous to health. The Code Authority shall submit to the Board for approval within two months from the effective date of the code a list of such operations or occupations. In any State an 501

employer shall be deemed to have complied with this provision as to age if he shall have on file a valid certificate or permit duly signed by the authority in such State empowered to issue employment or age certificates or permits, showing that the employee is of the required age. 501

Provisions from the Act

Section 2. (a) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. 511

(b) No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing, and 512

(c) Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President. 513

Evasion through subterfuge

Section 3. No employer shall re-classify employees or duties of occupations performed or engage in any subterfuge so as to defeat the purposes or provisions of the Act or of this Code. 521

Dismissal

Section 4. No employer shall dismiss, demote, or otherwise discriminate against any employee for making a complaint or giving evidence with respect to an alleged violation of the provisions of any Code of Fair Competition. 522

Standards for safety and health

Section 5. Every employer shall make reasonable provision for the safety and health of employees during the hours and at the place of employment. Within six months of the effective date of the code, standards of safety and health (permissive and/or mandatory) shall be submitted by the Code Authority to the Board for approval. 523

State laws

Section 6. No provision in this Code shall supersede any Federal, State, or Municipal law or any labor agreement which establishes more stringent requirements as to age of employees, wages, hours of work, or general working conditions, then are established in this Code. 524

Posting

Section 7. Every employer shall post and keep posted the labor provisions of this Code in accordance with rules and regulations 525

prescribed by the Board. 525

Homework

Section 8. No employer shall permit any homework except at 531
the same rate of wages as is paid for the same type of work performed in the factory or other regular places of business and after a certificate has been obtained from the state authority or other officer designated by the U. S. Department of Labor, such certificate to be granted in accordance with instructions issued by the U. S. Department of Labor. Such certificate shall be granted only if:

(a) The employee is physically incapacitated for work in a factory or other regular place of business and is free from any contagious disease; or

(b) The employee is unable to leave home because his or her services are absolutely essential for attendance on a person who is bedridden or an invalid and both such persons are free from any contagious disease.

An employer engaging such a person shall keep such certificate on file and shall file with the Code Authority for the trade or industry or subdivision thereof concerned, the name and address of such worker so certified.

Company towns and stores

Section 9. No employee other than maintenance or super- 541
visory men or those necessary to protect property shall be required as a condition of continued employment to live in a house rented from or designated by his employer or the employer's agent.

No employee shall be required as a condition of continued employment to trade at any store or subscribe to any services designated by his employer or the employer's agent.

Notice of discharge

Section 10. No employee who has been regularly employed for 551
four weeks with any one establishment may be discharged or laid off without a prior notice of one week.

Contracting

Section 11. No member of the industry, irrespective of the 552
method of compensation, shall contract out work which if done by him would be subject to this code, unless there is inserted in the contract an express provision for the benefit of the employees of the contractor requiring such contractor to abide by the provision of this code, and a provision that such contractor shall not avoid or evade the labor provisions of this code by further contracting for such work.

ARTICLE VI

ORGANIZATION, POWERS AND DUTIES OF THE CODE AUTHORITY

Organization and constitution

Section 1. A Code Authority is hereby established consisting of _____ persons to be selected in the following manner: 601

(Here shall be stated the manner in which the members of the Code Authority shall be selected and the terms for which they shall serve. Provision should be made so that the Code Authority will be truly representative of the various majority, minority, and other interests in the trade/industry. If, however, by reason of conditions peculiar to the trade/industry, selection by the trade/industry is impracticable, it may be provided that appointment shall be by the Administrator.)

Section 2. In addition to membership as above provided, there may be _____ members, without vote, to be known as Administration members, to be appointed by the Board to serve for such terms as it may specify. 602

Section 3. Each trade or industrial association directly or indirectly participating in the selection or activities of the Code Authority shall (1) impose no equitable restrictions on membership, and (2) submit to the Board true copies of its articles of association, by-laws, regulations, and any amendments when made thereto, together with such other information as to membership, organization, and activities as the Board may deem necessary to effectuate the purposes of the Act. 603

Section 4. In order that the Code Authority shall at all times be truly representative of the trade/industry and in other respects comply with the provisions of the Act, the Board may prescribe such hearings as it may deem proper; and thereafter if it shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification of the Code Authority. 604

Section 5. Nothing contained in this Code shall constitute the members of the Code Authority partners for any purpose. Nor shall any member of the Code Authority be liable in any manner to anyone for any act of any other member, officer, agent, or employee of the Code Authority. Nor shall any member of the Code Authority, exercising reasonable diligence in the conduct of his duties hereunder, be liable to anyone for any action or omission to act under this Code, except for his own wilful malfeasance or non-feasance. 605

Section 6. If the Board shall at any time determine that any 606
action of a Code Authority or any agency thereof may be unfair or unjust or contrary to the public interest, the Board may require that such action be suspended to afford an opportunity for investigation of the merits of such action and further consideration by such Code Authority or agency pending final action which shall not be effective unless the Board approves or unless it shall fail to disapprove after thirty days notice to it of intention to proceed with such action in its original or modified form.

Powers and duties

Section 7. Subject to such rules and regulations as may be 610
issued by the Board, the Code Authority shall have the following powers and duties, in addition to those authorized by other provisions of this Code:

(a) To insure the execution of the provisions of this Code 611
and to provide for the compliance of the trade/industry with the provisions of the Act.

(b) To adopt by-laws and rules and regulations for its 612
procedure.

(c) To obtain from members of the trade/industry such in- 613
formation and reports as are required for the administration of the Code. In addition to information required to be submitted to the Code Authority, members of the trade/industry subject to this Code shall furnish such statistical information as the Board may deem necessary for the purposes recited in Section 3 a of the Act to such Federal and State agencies as it may designate; provided that nothing in this Code shall relieve any member of the trade/industry of any existing obligations to furnish reports to any government agency. No individual report shall be disclosed to any other member of the trade/industry or any other party except to such other Governmental agencies as may be directed by the Board.

(d) Each member of the industry shall keep accurate and 614
complete records of its transactions in the industry whenever such records may be required under any of the provisions of this Code, and shall furnish accurate reports based upon such records concerning any of such activities when required by the Code Authority or the Board. If the Code Authority or the Board shall determine that substantial doubt exists as to the accuracy of any such report, so much of the pertinent books, records and papers of such member as may be required for the verification of such report may be examined by an impartial agency, agreed upon between the Code Authority and such member, or in the absence of agreement, appointed by the Board. In no case shall the facts disclosed by such examination be made available in identifiable form to any competitor, whether on the Code Authority or otherwise, or be given any other publication, except such as may be required for the proper administration or enforcement of the provisions of this Code.

(e) To use such associations and other agencies as it deems proper for the carrying out of any of its activities provided for herein, provided that nothing herein shall relieve the Code Authority of its duties or responsibilities under this Code and that such trade associations and agencies shall at all times be subject to and comply with the provisions hereof. 615

(f) To make recommendations to the Board for the coordination of the administration of this code and such other codes, if any, as may be related to or affect members of the trade/industry. 616

(g) 1. It being found necessary in order to support the administration of this code and to maintain the standards of fair competition established hereunder and to effectuate the policy of the Act, and Code Authority is authorized: 617

(a) To incur such reasonable obligations as are necessary and proper for the foregoing purposes, and to meet such obligations out of funds which may be raised as hereinafter provided and which shall be held in trust for the purposes of the Code; 618

(b) To submit to the Board for its approval, subject to such notice and opportunity to be heard as it may deem necessary (1) an itemized budget of its estimated expenses for the foregoing purposes, and (2) an equitable basis upon which the funds necessary to support such budget shall be contributed by members of the trade/industry; 619

(c) After such budget and basis of contribution have been approved by the Board, to determine and obtain equitable contribution as above set forth by all members of the trade/industry, and to that end, if necessary, to institute legal proceedings therefor in its own name. 620

2. Each member of the trade/industry shall pay his or its equitable contribution to the expenses of the maintenance of the Code Authority, determined as hereinabove provided, and subject to rules and regulations pertaining thereto issued by the Board. Only members of the trade/industry complying with the code and contributing to the expenses of its administration as hereinabove provided, (unless duly exempted from making such contributions), shall be entitled to participate in the selection of members of the Code Authority or to receive the benefits of any of its voluntary activities or to make use of any emblem or insignia of the National Recovery Administration. 621

3. The Code Authority shall neither incur nor pay any obligation substantially in excess of the amount thereof as estimated in its approved budget (and shall in no event exceed the total amount contained in the approved budget), except upon approval of the Board; and no subsequent budget shall contain any deficiency item for expenditures in excess of prior budget estimates except those which the Board shall have so approved. 622

(h) To recommend to the Board any action or measures deemed advisable, including further fair trade practice provisions to govern members of the trade/industry in their relations with each other or with other trades/industries, measures for industrial planning, and stabilization of employment; and including modifications of this Code which shall become effective as part hereof upon approval by the Administrator after such notice and hearing as he may specify. 623

(i) To appoint a Trade Practice Committee which shall meet with the Trade Practice Committees appointed under such other codes as may be related to the trade/industry for the purpose of formulating fair trade practices to govern the relationships between employers under this code and under such other codes to the end that such fair trade practices may be proposed to the Board as amendments to this code and such other codes 624

(j) To provide appropriate facilities for arbitration, and subject to the approval of the Administration, to prescribe rules of procedure and rules to effect compliance with awards and determinations. 625

(k) The Code Authority shall cause to be formulated and keep current a classification of all types of customers of the trade/industry. Such classification shall be subject to the disapproval of the Board and shall contain: (a) a complete list of all of the classes of customers of the trade/industry, including a class to cover every known type of customer; and (b) definitions or descriptions of the several classes in terms of functions performed, or in other appropriate terms such as purchasers of defined quantities. 626

After submission to the Board, if there is no disapproval of request for suspension of action within twenty days, full information concerning the classification shall be made available to all members of the trade/industry. No one shall by intimidation, coercion, or other undue influence cause or attempt to cause the inclusion of any customer in or the exclusion of any customer from any class of customers, or the exclusion of any class of customers from the classification, or the use of uniform or stipulated prices, discounts, or differentials; and each member of the trade/industry may at all times classify his own customers in accordance with his own judgment. 627

(l) There shall be established a Labor Complaints Committee for the trade/industry, which shall consist of an equal number of representatives of employers and employees and an impartial chairman. The Board shall appoint such impartial chairman upon the failure of the committee to select one by agreement. If no truly representative labor organization exists, the employee members of such board may be nominated by the Labor Advisory Board of the National Recovery Administration and appointed by the Board. The employer representatives shall be chosen by the Code Authority. Such Committee shall deal with complaints of violations of the labor provisions of this Code in accordance with rules and regulations. The Labor Com- 628

plaints Committee may establish such divisional, regional, and local industrial adjustment agencies as it may deem desirable, each of which shall be constituted in like manner as the Labor Complaints Committee. 628

ARTICLE VII

TRADE PRACTICE RULES

Rule 1. Inaccurate advertising

No member of the trade/industry shall publish advertising (whether printed, radio, display, or of any other nature), which is misleading or inaccurate in any material particular, nor shall any member in any way misrepresent any goods (including but without limitation its use, trade-mark, grade, quality, quantity, origin, size, substance, character, nature, finish, material, content, or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted. 701

Rule 2. False billing

No member of the trade/industry shall knowingly withhold from or insert in any quotation or invoice any statement that makes it inaccurate in any material particular. 702

Rule 3. Inaccurate labelling

No member of the trade/industry shall brand or mark or pack any goods in any manner which tends to deceive or mislead purchasers with respect to the brand, grade, quality, quantity, origin, size, substance, character, nature, finish, material content or preparation of such goods. 703

Rule 4. Defamation

No member of the trade/industry shall defame a competitor by falsely imputing to him dishonorable conduct, inability to perform contracts, or questionable credit standing, or by other false representation, or by falsely disparaging the grade or quality of his goods. 704

Rule 5. Threats of law suits

No member of the trade/industry shall publish or circulate unjustified or unwarranted threats of legal proceedings which tend to or have the effect of harassing competitors or intimidating their customers. 705

Rule 6. Secret rebates

No member of the trade/industry shall secretly offer or make any payment or allowance of a rebate, refund, commission, credit, unearned discount, or excess allowance, whether in the form of money or otherwise, nor shall a member of the trade/industry secretly offer or extend to any customer any special service or privilege 706

not extended to all customers of the same class, for the purpose of 706
influencing a sale.

Rule 7. Bribing employees

No member of the trade/industry shall give, permit to be given, 707
or offer to give, anything of value for the purpose of influencing or rewarding the action of any employee, agent, or representative of another in relation to the business of the employer of such employee, the principal of such agent, or the represented person, without the knowledge of such employer, principal, or person. This provision shall not be construed to prohibit free and general distribution of articles commonly used for advertising except so far as such articles are actually used for commercial bribery as hereinabove defined.

Rule 8. Inducing breach of existing contracts

No member of the trade/industry shall wilfully induce or attempt 708
to induce the breach of existing contracts between competitors and their customers by any false or deceptive means, or interfere with or obstruct the performance of any such contractual duties or services by any such means, with the purpose and effect of hampering, injuring, or embarrassing competitors in their business.

Rule 9. Coercion

No member of the trade/industry shall require that the purchase 709
or lease of any goods be a prerequisite to the purchase or lease of any other goods.

Rule 10. Open price provisions

Each member of the trade/industry shall file with a confidential 711
and disinterested agent of the Code Authority, or if none, then with such an agent designated by the Board, identified lists of all of his prices, discounts, rebates, allowances, and all other terms or conditions of sale, hereinafter in this Article referred to as "price terms," which lists shall completely and accurately conform to and represent the individual pricing practices of said member. Such lists shall contain the price terms for all such standard products of the trade/industry as are sold or offered for sale by said member and for such non-standard products of said member as shall be designated by the Code Authority. Said price terms shall in the first instance be filed within _____ days after the date of approval of this provision. Price terms and revised price terms shall become effective immediately upon receipt thereof by said agent. Immediately upon receipt thereof, said agent shall by telegraph or other equally prompt means notify said member of the time of such receipt. Such lists and revisions, together with the effective time thereof, shall upon receipt be immediately and simultaneously distributed to all members of the trade/industry and to all of their customers who have applied therefor and have offered to defray the cost actually incurred by the Code Authority in the preparation and distribution thereof, and be available for inspection by any of their customers at the office of such agent. Said lists or revisions or any part thereof shall not be made available to any person until released to all members of the trade/-

industry and their customers, as aforesaid; provided, that prices filed in the first instance shall not be released until the expiration of the aforesaid_____day period after the approval of this Code. The Code Authority shall maintain a permanent file of all price terms filed as hereinabove provided, and shall not destroy any part of such records except upon written consent of the Board. Upon request the Code Authority shall furnish to the Board or any duly designated agent of the Board copies of any such lists or revisions of price terms. 711

When any member of the trade/industry has filed any revision, such member shall not file a higher price within forty-eight hours. 712

No member of the trade/industry shall sell or offer to sell any products/services of the trade/industry, for which price terms have been filed pursuant to the provisions of this Article, except in accordance with such price terms. 713

No member of the trade/industry shall enter into any agreement, understanding, combination, or conspiracy to fix or maintain price terms, nor cause or attempt to cause any member of the trade/industry to change his price terms by the use of intimidation, coercion, or any other influence inconsistent with the maintenance of the free and open market which it is the purpose of this Article to create. 714

Rule 11. Costs and price cutting

The standards of fair competition for the trade/industry with reference to pricing practices are declared to be as follows: 720

(a) Wilfully destructive price cutting is an unfair method of competition and is forbidden. Any member of the trade/industry or of any other trade/industry or the customers of either may at any time complain to the Code Authority that any filed price constitutes unfair competition as destructive price cutting, imperiling small enterprise, or tending toward monopoly or the impairment of code wages and working conditions. The Code Authority shall within five days afford an opportunity to the member filing the price to answer such complaint and shall within fourteen days make a ruling or adjustment thereon. If such ruling is not concurred in by either party to the complaint, all papers shall be referred to the Research and Planning Division of the National Recovery Administration which shall render a report and recommendation thereon to the Board. 721

(b) When no declared emergency exists as to any given product, there is to be no fixed minimum basis for prices. It is intended that sound cost estimating methods should be used and that consideration should be given to costs in the determination of pricing policies. 722

(c) When an emergency exists as to any given product, sale below the stated minimum price of such product, in violation of paragraph e hereof, is forbidden. 723

(d) If the Board, after investigation shall at any time find 724
both (1) that an emergency has arisen within the trade/industry adversely affecting small enterprises or wages or labor conditions, or tending toward monopoly or other acute conditions which tend to defeat the purposes of the Act; and (2) that the determination of the stated minimum price for a specified product within the trade/-industry for a limited period is necessary to mitigate the conditions constituting such emergency and to effectuate the purposes of the Act, the Code Authority may cause an imparrial agency to investigate costs and to recommend to the Board a determination of the stated minimum price of the product affected by the emergency and thereupon the Board may proceed to determine such stated minimum price.

(e) When the Board shall have determined such stated minimum 725
price for a specified product for a stated period, which price shall be reasonably calculated to mitigate the conditions of such emergency and to effectuate the purposes of the Act, it shall publish such price. Thereafter, during such stated period, no member of the trade/industry shall sell such specified products at a net realized price below said stated minimum price and any such sale shall be deemed destructive price cutting. From time to time, the Code Authority may recommend review or reconsideration, or the Board may cause any determinations hereunder to be reviewed or reconsidered and appropriate action taken.

Rule 12. Cost finding

The Code Authority shall cause to be formulated methods of 731
cost finding and accounting capable of use by all members of the trade/industry and shall submit such methods to the Board for review. If approved by the Board, full information concerning such methods shall be made available to all members of the trade/industry. Thereafter, each member of the trade/industry shall utilize such methods to the extent found practicable. Nothing herein contained shall be construed to permit the Code Authority, any agent thereof, or any member of the trade/industry to suggest uniform additions, percentages, or differentials, or other uniform items of cost which are designed to bring about arbitrary uniformity of costs or prices.

Rule 13. Advertising allowances

No member of the trade/industry shall designate as an "advertis- 741
ing allowance", a "promotion allowance," or by a similar term, any price reduction, discount, bonus, rebate, concession, or other form of allowance, or any consideration for advertising or promotion services, offered or given by him to any customer.

No member of the trade/industry shall offer or give any con- 742
sideration merely for "pushing", or "advertising," or otherwise than for definite and specific advertising or promotion services. Such consideration shall be given only pursuant to a separate written contract therefor, which contract shall specifically and completely set forth the advertising or promotion services (in such manner that

their specific character may be understood by other members of the trade/industry and their customers) to be performed by the recipient of said consideration, the precise consideration to be paid or given therefor by said member, the method of determining performances, and all other terms and conditions relating thereto. 742

(The following are examples of provisions for publicity which may be found workable and desirable by particular industries.)

Example 1. Immediately upon the making of any such contract for advertising or promotion services by any member of the trade/industry, a true copy thereof shall be filed by said member with a confidential and disinterested agent of the Code Authority (as provided for in this code), or, if none, then with such an agent to be designated by the Board. Said agent shall maintain all copies of such contracts on file until six months after the termination thereof, and shall make the same available at his office for inspection at all reasonable times by all members of the trade/industry, and all of their customers, and shall distribute a true copy of any such contract to any member of the industry or any customer who applies therefor and offers to pay the cost actually incurred by the Code Authority in the actual preparation and distribution thereof; provided, that no such inspection or copy shall be permitted or made available to any person until permitted or made available to all members of the industry and their customers, as aforesaid. Upon request, said agent shall furnish to the Board, or any duly designated agent of the Board, copies of any such contract. 743

Example 2. Immediately upon the making of any such contract for advertising or promotion services by any member of the trade/industry, a true copy thereof shall be filed with a confidential and disinterested agent of the Code Authority (as provided for in this Code), or, if none, then with such an agent to be designated by the Board. Said agent shall thereupon proceed to have copies of such contract published in a journal or journals or other appropriate medium of general circulation among members of the trade/industry. 744

Rule 14. Liquidated damages

Any member of the trade/industry may enter into an agreement with any other member or members of the trade/industry providing for the payment of Liquidated damages by any party thereto upon violation by him of any provision of the Code, provided, however, that such agreement shall become effective and binding on the parties thereto only after the execution thereof shall have received the consent of the Board. 751

Rule 15. Standards

(a) Within thirty days after the effective date of the Code, the Code Committee shall establish a permanent standards committee, two members of which shall be appointed by the Board to represent Government and Consumer interests, 761

(b) This Committee shall:

(1) Make studies and investigations for the establishment of classifications, dimensional standards, standards of quality (grades), and labeling of the products of this industry, in cooperation with the American Standards Association or the Bureau of Standards of the United States Department of Commerce, and submit recommendations based upon such studies to the Code Committee within six months of the date of the Committee's appointment. 762

(2) Proposes appropriate revisions of approved standards from time to time. 763

(3) Advise the Trade Practice Complaints Committee concerning the enforcement of all such standards as established and approved. 764

(c) Upon submission of the Committee's findings to the Code Committee, the Code Committee shall immediately submit such standards either to the American Standards Association for consideration and approval or to the Bureau of Standards of the United States Department of Commerce for consideration and promulgation; provided, however, that in case of disagreement within the Committee, the Code Committee shall determine, subject to the approval of the Board, the nature of the standards to be submitted to such standardizing agencies. 765

(d) After promulgation and such review as the Board may determine, these standards may be approved as a fair trade practice to be mandatory upon all members of this trade/industry pending the approval of subsequent standards or revisions of standards which may be established from time to time through the same procedure as set forth above. 766

(e) It is further provided, however, that no standard shall be approved by the Board which may be construed in any material particular as prohibiting the manufacture and/or sale of non-standard industry products clearly identified to purchasers as to their deviation from such standards, if such non-standard products are in no way harmful to the users. 767

Rule 16. Design protection: Plan Number 1
Mandatory registration

(a) No member of this industry shall take orders for, or use in the manufacture of any products of this industry, any design embodied in such products unless an exact copy thereof has been registered with the Design Registration Bureau of the industry and unless such member is the holder of the registration certificate or has obtained the written consent of the member making the registration. This rule shall not apply to such standard or stable designs compiled by the said Registration Bureau and on file therein, and provided that nothing herein contained shall limit or deprive any member of this industry of any rights or benefits existing under the present patent or copyright laws. 771

(b) The term "design" as used in this industry shall mean and be limited to the effect obtained by a combination of such of the following elements as are embodied in a product manufactured in this industry: (1) the shape resulting from the method of cutting, sewing, draping, and pressing; (2) the combination of fabrics and colors, including their use and placement; (3) the decoration, including the kind and placement; provided that the term "design" shall not include style trend. 772

(c) There shall be designated by the Code Committee, subject to the approval of the Board, an impartial agency to be known as the "Design Registration Bureau." Said Bureau shall have the following powers and duties, subject to such rules and regulations as may be issued by the Board: 773

(1) Said Bureau shall compile and make permanent a list of all standard or stable designs now recognized as such in this industry, and upon completion of such compilation shall make such list available to all members of this industry. 774

(2) Following completion of the compilation of such list of standard or stable designs the said Bureau shall not accept for registration any design, the identical design of which is contained in said compiled list, or any design previously registered, provided that whenever a design so submitted is rejected for registration on the grounds that it is either contained in the compiled list, or has been previously registered by said Bureau, the rejected application may be referred for determination to an arbiter agreed upon by the Code Committee and the member whose registration was rejected. Provided that any design accepted for registration must be used within three months after its registration, otherwise said design shall be classified as a stable or standard design, and provided further that after one year from the date of its registration the said registered design shall be classified as a stable or standard design. 775

(3) The Code Committee shall have the right to require a fee to be paid by the member of the industry submitting the design for registration, the amount of which fee shall be recommended by the Code Committee and approved by the Board. 776

Design protection: Plan Number 2.
No registration

(a) No member of this industry shall take orders for, or use in the manufacture of his products any design embodied in such products previously used and owned by any other member of this industry without first obtaining written permission to use such design from said prior user, provided that this prohibition shall not apply to standard or stable designs used in the industry, and provided further that nothing herein contained shall limit the protection or right granted under the existing patent and copyright laws. 777

(b) The term "design" as used in this industry shall mean and be limited to the effect obtained by a combination of such of the following elements as are embodied in a product manufactured in this industry: (1) the shape resulting from the method of cutting, sewing, 778

draping, and pressing; (2) the combination of fabrics and colors, including their use and placement; (3) the decoration, including kind and placement; provided that the term "design" shall not include style trend. 778

(c) Any complaint made to the Code Committee under this provision shall be referred to an impartial arbiter or commission agreed upon by the person complained of and the Code Committee and such determination made by such impartial arbiter or commission shall be subject to review by the Board. 779

ARTICLE VIII

EXPORT TRADE

No provision of this Code relating to prices or terms of selling, shipping, or marketing shall apply to export trade or sales or shipments for export trade. "Export Trade" shall be as defined in the Export Act adopted April 10, 1918. 801

ARTICLE IX

MODIFICATION

Section 1. This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of subsection (b) of Section 10 of the Act, from time to time to cancel or modify any order, approval, license, rule, or regulation issued under Title I of said Act. 811

Section 2. Such of the provisions of this Code as are not required to be included herein by the Act may, with the approval of the Board, be modified or eliminated in such manner as may be indicated by the needs of the public, by changes in circumstances, or by experience. All the provisions of this Code, unless so modified or eliminated, shall remain in effect until June 16, 1935. 812

ARTICLE X

MONOPOLIES, ETC.

No provision of this Code shall be so applied as to permit monopolies or monopolistic practices, or to eliminate, oppress, or discriminate against small enterprises. 821

ARTICLE XI

PRICE INCREASES

Whereas the policy of the Act to increase real purchasing power will be made more difficult of consummation if prices of goods and services increase as rapidly as wages, it is rdcognized that price increases except such as may be required to meet individual cost should be delayed, and when made such increases should, so far as possible, be limited to actual additional increases in the seller's costs. 831

ARTICLE XII

EFFECTIVE DATE

This Code shall become effective on the second Monday after its approval by the President. 841

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